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THE RECONSTRUCTION
OF THE ENGLISH CHURCH

VOLUME II

THE RECONSTRUCTION OF THE ENGLISH CHURCH

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CONTENTS

VOLUME II

BOOK SECOND (Continued)

CHAPTER PAGE

VII Justice Tempered with Mercy 3

VIII Administrative Reconstruction 20

BOOK THIRD

VINDICATION OF RECONSTRUCTION

I. Legal Obstacles to the Augmentation of Ecclesiastical Incomes 53

II. The Articuli Cleri, 1605 74

III. The Gunpowder Plot and the Oath of Allegiance 89

IV. Parliamentary Opposition to Ecclesiastical Reform 113

V. Attack upon the High Commission, 1607 134

VI. Reconstruction in Scotland, 1606-1610 154

VII. The Oath of Allegiance Accepted 175

VIII. The Movement for Catholic Bishops 192

IX. Struggle with the Common Law, 1608 206

X. Debates upon Legal Controversies, July, 1609 230

XI. The Parliament of 1610 and the Augmentation of Ecclesiastical Incomes 246

XII. The Results of Reconstruction 263

APPENDICES

I. Constitutional Precedents 273

The Precedent for the Canons of 1604 273

Precedents for Visitation Articles 289

CONTENTS

PAGE

The Precedent for Canon XXXVI of the Canons of 1604 ... 293

The Precedent for the Oath of Allegiance ... 310

II. Constitutional Documents ... 325

Orders of 1593 ... 325

"A Note of Diverse Thinges Considerable About the Execution of the Late Canons, etc." ... 327

III. The Hampton Court Conference ... 331

"The Bishopps Proceedings and Opinions Towching those things which were Comitted to theire Consideracon." ... 331

An anonymous account in favor of the bishops, Hampton Court Conference ... 335

Puritan Accounts of the Hampton Court Conference ... 338

IV. A List of Puritan Complaints Prior to 1604 ... 355

V. Puritan Manifestoes ... 358

"Advice tending to Reformation," ... 358

"Directions from the Brethren in London, 1603, 14 July" .. 359

Action of the Northamptonshire Classis, July, 1603 ... 361

"The Puritans' Directions to Avoyde the Proceedinges of the Byshopps," ... 362

VI. Whitgift's Letter of 1597 Concerning Bancroft's Previous Career ... 366

VII. Bibliography ... 370

INDEX ... 417

BOOK SECOND *(Continued)*

RECONSTRUCTION

CHAPTER VII

JUSTICE TEMPERED WITH MERCY

Contemporaries were by no means agreed as to the number of ministers deprived. Rudd, the Bishop of Chester, said, in the Convocation of 1604, that it was "bruited abroad" that the Puritans who would refuse to conform were "diuers hundred in number,"[1] while John Burgess wrote to James that "six or seauen hundred of the ablest ministers in the land are like to be put out."[2] On the other hand, Nathaniel Bacon declared in the House of Commons in March, 1605-6, after the deprivation, that two hundred and sixty ministers had actually been deprived;[3] Henry Yelverton charged Bancroft to his face, at a conference of the two houses of Parliament, with depriving three hundred[4]; and in June, 1607, it was said in debate, "that three hundred (were) deprived, suspended or silenced."[5] The author of the tract, *The Altar of Damascus,* gives the number deprived as three hundred, though the Reverend Samuel Hieron, in his *Short Dialogue,* says "the number of such as are deprived, silenced, suspended, and admonished, amounts to the some of two hundred seventy-five at the least . . . besides many others that are in question, and many others who being of the same iudgment and practice are like to be talked withal." From the *Dialogue between an old Protestant and a new Formalist* (p. 59) we learn that "of those already remoued, restrained or refused to be admitted, their names I say being taken the first of November, 1605, amounted to two hundred seventy and upward, and yet there were eight Bishoppricks whereof it could not yet be learned what had been done in them."

The sympathisers with the Church, have on the other hand, found comfort in the statement of Archbishop Spotiswood of Glascow.[6] "Let me add that which *I was afterward told* by Richard Bancroft,

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[1] Harleian MSS. 677, f. 41.

[2] S. P. Dom. Jac. I, VIII, no. 85.

[3] *Commons Journals*, I, 285.

[4] Lambeth MSS. 445, f. 424.

[5] *Commons Journals*, I, 385.

[6] *History of the Church of Scotland*, 479.

Archbishop of Canterbury, . . . that when the Rolls were brought in of those that stood out and were deposed, which was some years after, they were found to be forty-nine in all England, whereas the ministers of that kingdom are reckoned nine thousand and above.'' Yelverton also reported to the House of Commons, in 1606, that Bancroft himself replied to the charge of depriving three hundred, by alleging that only sixty had been deprived who were factious.[1] In any strict sense, none of these statements are evidence, for they are all hearsay, but those quoted from Bancroft come direct and seem to be more trustworthy than the others. Nevertheless, while the Puritan statements may not be literally correct, the impression derived from them may be more nearly the truth than that obtained from the very low figure cited from Bancroft's own lips.

A certain looseness of terminology based, perhaps, on an ignorance of ecclesiastical procedure has been responsible for many of the extreme statements of later writers.[2] Bancroft says explicitly, forty-nine or less than sixty ''deprived;'' Hieron says two hundred and seventy-five ''deprived, silenced, suspended, and admonished,'' a phrase nearly repeated in the statement of two hundred seventy ''remoued, restrained, or refused to be admitted.'' These figures, however, do not relate to the same thing: only forty-nine might have been deprived and yet two hundred seventy-five or three hundred might have been deprived, suspended, silenced and admonished. Nevertheless, it has often been asserted that three hundred were deprived, and that Bancroft's statement was ridiculously small, while the Church writers have, on the other hand, been as ready to turn the story round.[3] In reality, there were various

[1] Lambeth MSS. 445, f. 424. ''Where we said the number was three hundred, and his Grace answered, not above sixty, and against them opposed 10,000 and that these sixty were factious.''

[2] Another sort of carelessness has been responsible for the constant use, in this connection, of the figures 746 for the ministers deprived, (e. g. Urwick, *Nonconformity in Cheshire*, p. viii) and many of the local histories contain notes of various large totals deprived in that county, all of which can be traced to a table of Puritan ministers in *An Abridgment of the Book of the Lincolnshire Puritans of* 1605, p. 52. But the tract states explicitly that the figures set opposite each county refer to the ''number of preachers . . . which before the beginning of this last parliament (i. e. before March, 1604) witnessed under their own handwriting their desire to petition for the removing of them'' (the ceremonies). Yet this list, which does not seem trustworthy in any connection, has been quoted and used for every conceivable purpose by Puritan writers, invariably without acknowledgment. It certainly cannot refer to the deprivations

[3] Dr. Gardiner has adopted the Puritan view. (*History of England*, I, 197.) ''It has been calculated that about three hundred of the clergy

grades of ecclesiastical censure, of which deprivation was the last and most severe and alone voided the benefice. Comparatively few might have been deprived and yet a large number might have been suspended and admonished. Both statements, properly understood, may be true, for they refer to different things.

A very careful compilation of figures has been made by selecting from the most trustworthy sources[1] the actual number of ministers who had been summoned or who were thought to be nonconformable, with a view of finding how many men might have been proceeded against. It should not be forgotten that every minister, who was properly Puritan, felt himself threatened by the orders to enforce conformity and that therefore very nearly the whole strength of the party ought to be found in the estimate. The tally of 297 men[2] gives nearly the figure we meet so often in Puritan accounts, and is very near the 281 men whose names are now known as adherents of the party. The figure 300, therefore, which we meet so often, is more likely the number of men who believed themselves to be threatened than the number who were actually proceeded against by the bishops.

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were ejected.'' In his footnote, he adds, ''the number has been estimated as low as forty-nine; but the arguments in Vaughan's *Memorials of the Stuarts* seem to me conclusive in favour of the larger number. To the authorities quoted there may be added the petition of the Warwickshire ministers (S. P. Dom. XI, 68) who speak of twenty-seven being suspended in that country alone; though the Bishop expressed his sorrow for that which he was forced to do.'' This last is not quite literally true. The petition reads: ''who are allreadie *for ye most part* suspended . . . and doe *all* expect presentlie to be fullie depriued.'' The reference is wrongly given to volume XI instead of to volume XII. It will be noted that Dr. Gardiner has made no use of the voluminous correspondence at Hatfield. The passage from Vaughan referred to seems to be the following: ''It was affirmed during this reign and apparently without contradiction (?) that more than three hundred preachers were at this time deprived of their livings, or silenced and exposed with their families to the miseries of want.'' ''Dr. Heylin, whose authority unsupported is worthless (Aer. Rediv. 367), has attempted to reduce the number to something less than a sixth of that amount. The Puritans, as a matter of course, were concerned to demonstrate the impolicy and cruelty of these measures and that object would not be promoted by underrating their sufferings. The opponents of the Puritans . . . (reduced) the story of Puritan wrongs to the narrowest possible compass.'' (I, 144, London, 1831.)

[1] The holograph reports of the Bishops to the Council, the original petitions of the ministers and gentry.

[2] The list is included in the table already printed in Book I, Chap. XI. Some of the figures seem to be very much too large, but probably only make good the deficiencies elsewhere. After all, such estimates were, in 1604, precisely what they are now, guess-work. No complete census of the Puritan party had been made and probably they now themselves first obtained accurate information.

The number of the deprived, as gathered from the Institution Books and from the bishops' reports to Bancroft and Cecil, is under the archbishop's estimate, rather than above it. Fifteen were deprived in the diocese of Peterborough, and the Bishop thought it necessary to apologize to the Council for his severity by explaining that the great bulk of the obstinate Puritans were in his diocese. Some five or six in London, eight in Lincoln, five in Exeter, eight in Norwich, six in Chichester, and one in Canterbury,[1] make up a total of forty-eight men actually deprived and probably some dozen over the rest of England, for which we have no explicit information, would easily bring the total to about sixty. The apology of the Bishop of Peterborough adds credit to this estimate, for according to it, he did deprive two or three times as many as the other bishops, and the agreement of the episcopal records with the Bishop's letters increases our faith in his veracity. Several men deprived were later allowed to resume their cures, and thus it became clear that about sixty men were at first deprived, but that, in 1609, when the final returns were given in by the bishops, the number certified was forty-nine.

Further to confirm this verdict, we may examine the records of institutions. Might it not be true that the bishops only deprived sixty and that Bancroft added considerably to the total during the Archiepiscopal Visitation which followed from May to October, 1605, and when, as a matter of law, the bishops were suspended from exercising their functions and the complete control of the whole Church passed into the hands of the Archbishop and his Visitors? But the record of the institutions made by Bancroft during this Visitation, as preserved in his official Register at Lambeth Palace, shows eight deprivations for the whole of England and Wales, six of which were in the diocese of Chichester and have been already counted in the figures above given. The Bishop of Chichester died before depriving the Puritans and the Archbishop took the final steps during the vacancy of the See. In all, Bancroft made fifty-two institutions, eight because of deprivation, one because of cession, twelve from resignation, twenty from death, and eleven because the cure was vacant. Even had the whole fifty-two been deprivations, no such total would have been reached as many of the Puritans claimed. A further tabulation of the institutions in London, Norwich, Lincoln, Peterborough and Canterbury (the diocese), shows that no other total than sixty deprivations is consistent with the general trend of ecclesiastical administration. The majority of all institutions were made because of the death of the previous incumbent, and, if the forty-one institutions in the diocese of Norber would still be nine short of the ministers claimed by the Puritans as threatened in Suffolk alone.

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[1] These figures were compiled from the Institution Books, of the various dioceses.

Again, it seems possible that this total of three hundred deprived was reached by the pressure put upon the ministers to resign or cede their benefices, so that the effect of deprivation was produced without the actuality.[1] But despite the fact that the number of resignations was large during the years 1605 and 1606, especially at Peterborough, it was only a slight increase over the years which preceded and followed, and, unless the process of virtual removal was begun before the passage of the Canons and continued after 1605, as no one has yet claimed, the theory must be rejected. The number of resignations, cessions, and the like, seems plainly to be due to the attempt to exchange benefices held in plurality between the clergymen of different dioceses so as to lessen the scandal of nonresidence. Another possible conjecture is readily seen to be of no value. In the records, are always a number of entries of institutions where no reason is assigned for the vacancy of the benefice. Might it not be true that the Bishop, eager to conceal the actual figures, had chosen this method of secreting them? Here, however, the largest number of unexplained entries at Norwich occurred during the years 1603 and 1607, when the Bishop could not have had any such intentions, while in the years 1605 and 1606, only one and two entries respectively, out of forty and forty-one, were unaccounted for. Again, if a large number of men had been suddenly deprived, and their benefices filled with the more conformable, we should naturally expect to find the general total of institutions in these years greatly exceeding the normal number. Yet, though there were forty-one institutions at Norwich in 1605, and forty in 1606, there were thirty-nine in 1603 and forty-nine in 1607, the difference in the total being regulated apparently by the variation in the number of deaths—thirty in 1607 against sixteen in 1605. On all these counts, there seems to be reason to believe that the figures given by the Archbishop to Yelverton and to Spotiswood were substantially correct.

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[1] Only two cases of this are forthcoming and these are not clear. Thomas Hieron of Marlowe Magna, Bucks, resigned in 1604 and John Spicer of Coginshoe, Northamptonshire, ceded his benefice October 26, 1608. The dates, however, are either too early or too late.

Undoubtedly the whole body of Puritan ministers felt themselves in danger of deprivation, and the recurrence of the figure 300 may be interpreted as designating the number who feared deprivation. Nevertheless, the whole three hundred were not even suspended, much less deprived, and the chief evidence lies in the fact that a considerable proportion of them conformed. The Bishop of Peterborough wrote to the Privy Council that he had persuaded as many to conform as he had deprived,[1] fifteen, and this too, in a diocese which was supposed to contain more obstinate and wilful Puritans than any other in England.[2] Almost all the bishops sent up to London similar reports of conversions, but failed to give figures. Still, inasmuch as the county of Essex and the diocese of Peterborough contained the staunchest Puritans in England, and, inasmuch as from one-half to three-quarters of them conformed, we shall not be far astray if we place the number suspended or silenced, in some degree for more or less of a year, at about one hundred, or a third of the number threatened, thus leaving a good margin for error.

Still more pregnant evidence that there was no wholesale suspension or deprivation of the Puritans lies in the fact that the churchwardens continued after the year 1605 as before, to present large numbers of ministers for not wearing the surplice and for characteristic Puritan failings of various types. Despite the love, which it is claimed that these congregations evinced for the deprived ministers, we find the people, and even the wardens, presenting to the Bishop, at the earliest opportunity, these very men who it is said were deprived, for the very offences which are said to have caused the deprivations. The wardens of the churches served by such Puritans as Travell, Gibson, Greenwood, Allen, Chalenor, Cutbert, Smart, Sweet, Hulse, Sherman, and others, promptly reported that "their late minister continues still unconformed and disobedient to the lawes ecclesiasticall of this Realme." Those ministers who preached after their suspension were, by their own wardens, brought to book with the members of the congregation who had supported them. It is inconceivable that all the pressure of the hierarchy could ever have secured such presentments, had the wardens and the great majority of the parish been really of that frame of mind which the Puritan utterances attributed to them. The men who were not deprived but still continued nonconformable shared this treatment. John Knewstubbs, the spokesman of the party at the Hampton Court Conference, neither conformed nor was deprived. "I am to entreat you to provide for Mr. Knewstubbs, yf you may," wrote Bedell to Ward on November 26, 1604, "any young man yt would be his curate to teach in his parish that would weare ye Surplice."[1] And in the very next year after the deprivations, the wardens of Cockfield presented to the Bishop, "John Knewstubbes for not wearing the surplesse nor useth the signe of the crosse."[2] At Watford, Hertfordshire, was beneficed a most ardent nonconformist, Anthony Watson, whose wardens were of his ways of thinking but whose congregation was not, for they informed the Archdeacon that Watson "hath not worn the surplesse: he hath omitted the cross in baptism: and he administers the communion to the people standing." Yet Watson was not deprived, though he was censured and his churchwardens compelled to do penance. By 1606, he had actually "provided his habit according to the Canons," but was nevertheless presented by the people "for not wearing his surpless always, for not having a cloke with sleeves and for not having a square cap."[3] Similar complaints were registered against most of the Essex and Suffolk ministers with whose names we are familiar.

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[1] A sample of the wild rumours afloat appears in the newsletter in Hatfield MSS. 104, f. 19, stating that the Bishop of Norwich had deprived thirty in Suffolk. If this was done, it is inconceivable that no trace of it should appear in the Records.

[2] Hatfield MSS. 104, f. 30.

Moreover, we have, in the diary of Adam Winthrop,[4] a stout Puritan, and the father of that great nonconformist, John Winthrop, the first Governor of Massachusetts Bay in New England, the record of the thoughts and doings of a man who lived in just that section of Essex and Suffolk where the Dedham and Braintree Classes had flourished and where these Puritans whose names are well known to us were beneficed. His diary is complete for the years 1604 to 1610 but he records no wide-spread feeling of alarm over the contemplated loss of the preachers he listened to so gladly, no lament over their removal or over the cruel treatment they endured. Instead we learn from time to time, that he had heard Mr. Knewstubbs, Mr. Rogers, Mr. Bird or Mr. Culverwell as visiting preachers. It is very unlikely that he would have been ignorant of any considerable agitation among the people over the predicament of their clergy or that, if known, he would have failed to record it. Had these men been silenced, suspended, or deprived, they could not have continued to preach undisturbed all the succeeding years, nor, had they lacked a cure, could they have been regularly presented to the Bishop for their nonconformity. Most astonishing of all, the Bishop apparently took no notice of these frequent presentments, which would certainly have provided him with every necessary pretext for the deprivation of all these nonconformists, if he had really desired to proceed against them.

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[1] Tanner MSS. 75, f. 129.

[2] Visitation Records, Norwich, Archdeaconry of Sudbury. 1606, and also 1611.

[3] Visitation Records preserved at St. Albans.

[4] Printed in the Appendix to the *Life and Letters of John Winthrop*, I, 418. The original paper book is Additional MSS. 37419. The part here used begins with f. 30.

If only sixty were deprived and a hundred suspended, silenced, and admonished, out of three hundred and fifty ministers, the bishops could hardly be charged with carrying matters to an extreme. Moreover, the treatment of the men who were deprived seems to have been lenient. On March 12, 1605, the Archbishop directed all the bishops to arrange matters with the next incumbent "that the party so deprived may have two or three months liberty to remain still in the parsonage or vicarage house, if he have no other of his own: that so he may have that time to provide for himself, and not be thrust out into the streets upon a sudden."[1] Fuller tells a story of Bancroft which he affirms he had from the minister himself who was concerned.[2] This man went to the Archbishop privately and told him that "it went against his conscience to conform, being then ready to be deprived. Which way, saith the Archbishop, will you live, if put out of your Benefice? The other answered, he had no way but to goe a begging and to put himself on Divine Providence. Not that, (saith the Archbishop) you shall not need to doe, but come to me, and I will take order for your maintenance." "It is a greate greife to us all," wrote the Bishop of Lincoln, "(if ther were any other remedie) to remoue them from theire Lyvinges, by reason whereof theire wyves and children, whoe haue geuen noe cause of offence, nether yet are hable to shift for themselves, shold be distressed.''[1] A petition from the gentry of Lancashire, of much the same tenor as the ill-fated Northamptonshire petition, was presented to Salisbury; yet, although he might easily have punished the writers, he wrote them a courteous letter explaining that, if they would only show the ministers that they themselves preferred conformity to nonconformity, they would be astonished to see how soon those men would submit.[2]

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[1] Cardwell, *Annals*, II, 101.

[2] *Church History*, Bk. X, p. 57.

At least half a dozen of the men deprived were at once readmitted, showing either that they conformed or that the bishop was lenient enough, having satisfied policy by demonstrating his ability and will to deprive them, to be content with half assent. Robert Travell and Thomas Gibson were deprived by the Bishop of Peterborough and readmitted on the very same day.[3] On February 1, George Pike, the vicar of Dunnington, had been deprived by the Bishop of Lincoln, who on March 14 inducted a new incumbent. But on March 29, we find ''George Pike, M. A. lately vicar of Donington, in Com: Lincoln: admitted preacher,'' and on May 15 read of his readmission to his benefice. Thomas Forman, rector of Cotes Parva, was sequestrated on April 26 and reinstated on May 24: but Anthony Nutter, deprived in February, 1604-5, waited till September, 1606 for his reinduction. Among all the Puritans none had been more notoriously disobedient and active than Arthur Hildersham. He had been one of the instigators of the early Classis movement; had disseminated the *Millenary Petition*, the *Advice tending to Reformation,* and the *Manifesto of* 1604; was strongly suspected of having had a hand in the writing of those documents and of instigating the Sussex petitioners of October, 1603. Apparently, no one had less reason to expect clemency than he. He had been silenced by the Bishop of Lincoln in December, 1604, suspended in February, 1605, and later in the year, deprived. Yet the very next year, the Bishop of Coventry and Lichfield allowed him to preach at a sort of prophesy in Repton, in Derbyshire, and Burton-upon-Trent, in Staffordshire, and the year 1608 found him once more in his own pulpit at Ashby-de-la-Zouche.[4] Alexander Cooke had achieved notoriety by his public declaration that he would put a curb into Bancroft's jaws, and, being very obstinate, had been deprived; but by 1606, he had been restored and, astonishing enough, we learn from the Visitation Books of that year, that he had "provided his habit according to the canon." John Harrison of Histon, Cambridgeshire, was about to be deprived, and sentence, in fact, was on the point of being pronounced, when it was recalled.[1]

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[1] Hatfield MSS. 110, f. 74, April 12, 1605.

[2] Hatfield MSS. 110, f. 117, draft of Cecil, April 30, 1605.

[3] April 30, and June 25.

[4] Brook, *Lives of the Puritans,* II, 382.

One of the chief Puritans in Essex, Richard Rogers, threatened with deprivation, was saved by the intercession of Lord Knollys. "It greatly troubles me," he wrote, "that after labouring betwixt thirty and forty years in the ministry, I am now accounted unworthy to preach." He seems to have been temporarily suspended, however, for May 30, 1606, we read, "if I preach no more, I heartily thank God for my liberty, both at home and abroad for this year and a half and I hope with some fruit. The bishop hath been my friend." On April 2, 1607, he recorded the "painful news of our Bishop Vaughan's death, who for twenty-eight months, being all the time he continued, he permitted all the godly ministers to live peaceably and to enjoy liberty in their ministry."[2] Elizabeth Mountagu was very loath to present any one to a benefice from which a Puritan had been deprived, until he had time to think over his stand, and so, having waited until her right of presentation had nearly expired, she sent word to the Bishop of her desires, who at once resigned to her his right of presentation which would become valid as soon as hers lapsed.[3] Mr. Collins wrote to John Coke, a Puritan gentleman, "The Bishop of Hereford has not taken away my letter of orders, he has only hindered my ministry in his diocese . . . I pray you be my remembrancer for what liberty in the ministry may be had above with the Archbishop."[4] One good lady, Sarah Venables, was so touched at the thought of the needs of the deprived ministers that she bequeathed all her property for a fund to be administered in their behalf, and we do not learn that the Archbishop gave her relatives any countenance in their attempt to break the will.[5]

Yet, while we grant that not a great many were suspended or deprived, that many conformed and many remained in the Church without either conforming or suffering deprivation, and that those who were suspended or deprived received lenient and merciful treatment at the hands of the bishops, were not the deprivations all a mistake of policy? Did not Bancroft exclude from the Church or antagonise that great moderate wing of the Puritan party which contained the element best worth uniting with the Establishment? Did he not drive them into radical revolt instead of compelling them to conform? Such questions, often asked and often answered in the affirmative, assume, in the first place, that the Puritans were not only very numerous but were also the cream of the English clergy for piety and learning, and that they possessed the heartfelt allegiance of a large minority of the English people. They imply the presence in the situation of factors which would have been of crucial importance had they existed, but which, as a matter of fact, cannot be demonstrated to have been present.

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[1] Cooper, *Athenæ Cantabrigienses*, II, 477.

[2] Brook, *Lives of the Puritans*, II, 233. (London, 1813) from manuscript diary.

[3] *Report on the Beaulieu MSS.* p. 46, July 3, 1605.

[4] *Report on the Manuscripts of the Earl of Cowper*, I, 63, January 1606-7.

[5] S. P. Dom. Jac. I, 37, no. 113; 45, no. 147.

Not only were the Puritan clergy few in numbers and by no means highly educated as a whole, but the men deprived and suspended cannot be said to have been the very best of the Puritans. The names of Travell, Gibson, Allen, Chalenor, Cutbert, Smart, Swett, Hulse, Sherman, Cooke, Ruddiard, Baldock, Ridout, Wood, all of whom were deprived, would not be known to us were it not for the Books of Institutions, and what little we can glean from the Visitation Records. They were not the leaders, nor the writers of books, nor the men of greatest learning. In truth, the bishops were careful not to deprive the prominent, pious, and learned, in order that the list of "martyrs" might have as few imposing qualities as possible. The men who suffered were, in the main, the rashest and least commendable of the radicals. Of the great majority against whom he proceeded, the Bishop of Peterborough wrote to the Privy Council, "The rest by me suspended are jurats and mercinarye readers. The most of them haue taken no degree of schooles, some are Batchelers of arts, very few masters of Arts, but all extremely willfull and contemptuous."[1] While some allowance might be made for the Bishop's natural bias, his statement is valuable because it confirms what our list of ministers tells us, and gives us some reason for believing that our information is fairly complete.

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[1] Bishop of Peterborough to Cranbourn, February 16, 1604-5. Hatfield MSS. 104, f. 30. Holograph.

On the other hand, Raignolds conformed but refused to subscribe in a vigorous and courageous letter to Bancroft, and yet was not molested. Nor was Knewstubbs troubled, and Chaderton, although at one time he felt himself threatened, managed to retain his place without seriously compromising his conscience. Ward, Bedell, Sparke, Feilde, Downame, and Harrison were not molested.

If the view that the expulsion of the Puritans injured the Church rests upon the premise that they were a vital part of it, it even more depends upon their leaving the Establishment, and this they certainly did not do. Indeed, there are few facts of Puritan history better and more firmly attested than the reluctance of these men to leave the Church, although none of them were able to approve it fully. Every petition, every attempt at legal obstruction, every essay to prolong the time of probation gave only additional testimony that they were loath to be ejected from the Established Church. And they did not go. The leaders were not molested, and others descended to casuistry in an attempt to satisfy the bishop without really promising what he wished.[1] Henry Jacobs published a book, and was compelled by the Government to retract certain expressions in it, and his retraction ended with the words: ''Howsoever I will allways heerafter behave myselfe quietly and as one carefull of the Churches peace, God assisting me.'' What Jacobs took this to mean appears sufficiently from a copy he retained and underneath which he wrote, ''I will allwayes heerafter behave myself quietly *which also I have don alwayes* heeretofore, I praise God.''[2] Such a promise was really no promise at all, and yet this man, who did a thing quite incomprehensible to us, had an unusually sensitive conscience for the year 1605. When Bedell was summoned before the bishop's chancellor at Norwich and urged to subscribe, he replied that he had already done so years before and ''had not revolted from yt, yt I was conformable as much as by law I was bounde; that he had no more reason to urge me to subscribe than any minister in ye Diocesse.'' He received a respite of nearly two months, although he frankly told the official that he knew no reason why he should then be urged to subscribe any more than at that very moment. As he explained to Ward, ''I refused not (nor doe

[1] This must be owned in fairness to the Catholics and to the bishops; let us be impartial with our left hand as well as with our right.

[2] Lambeth MSS. 113, f. 243. April 4, 1605.

not) the thing, but to do yt upon his urging besides law, etc.'' He himself was willing enough to subscribe, ''notwithstanding I haue yet forborne, least I should preiudice others by my president yt perhaps are not of yt indifferency in thes matters with myselfe,''[1] and he begs Ward to procure for him a proper clerical cap and hood with which the chancellor would be satisfied. ''It is, in truth,'' Raignolds wrote to Bancroft, ''the care of conscience before God *as well as ye credit before men* that moveth me, which yeilded willingly to conformity, not to yeild to subscription.''[2]

The influence which their actions would have upon others far more than their own personal disapproval of conformity or subscription, kept the leaders and the men of learning and piety from yielding. Bedell expressed great surprise on hearing from Ward that Chaderton was in danger of losing his office, ''mervayling ye more thereat, yf as you say he doth hold these matters indifferent and standeth only upon the offence'' to others weaker than he. This seemed to Bedell a slender reason: ''to say nothing yt when ye gratest part ys likely to be more offended yf these thinges be equall, and those yt haue sufficient reason shewed and will still persist are me thinckes no more to be (tolerated?) in their dislike than Brownists.''[3]

Burgess resisted every effort of his Bishop to convert him and was finally deprived and went into exile. He wrote, however, and signed on another occasion a submission meant only for the Council's eyes:— ''I doe hould and am persuaded of the crosse in baptisme and the surpless that as our Church useth them, they bee not unlawfull though in some men and places inexpedient. . . . For the subscription of the articles of '62, as the law requireth it and to his Majesties supremacie, I approve it without any ecception or qualification: and touchinge the third Article about the booke of common prayer and booke of ordination, doe houlde that however they haue some thinges in them which cannot singly be allowed as false translations, etc., yet considered in the purpose and entention of the Churche of England and reduced to the proportions and doctrines which it publiquely professethe, they contayne nothing contrary to the woorde of god.''[1]

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[1] Tanner MSS. 75, f. 132 a. March 11, 1604-5.

[2] Lambeth MSS. 929, f. 121. August 5, 1605. There is here also another letter which he had written to the Earl of Pembroke on September 2, 1604. ''By continual wearing of Cap and Surplice (which I have never refused) I do show I think them indifferent and lawful to be worn. . . . The use of the Cross I say after Baptisme with that Signification and Sense alone in which our Gratious King requireth it, I have rather wisht men to yeild unto for obedience then to leave their charge.'

[3] Tanner MSS. 75, f. 130.

Of all these men of some eminence Burgess was the only one who suffered at the bishops' hands; yet, years after, he became a good churchman, held a prebend at Lichfield Cathedral and published a book by command of that most strict churchman, Charles I. Ward remained as Master of Sidney Sussex College, became Lady Margaret Lecturer in Divinity, was one of the translators of the Bible, and even lived to become Chaplain to James I, and one of the ardent opponents, in Church circles, of Laud and Arminianism. Both Raignolds and Chaderton also played a conspicious part in the translation of the Bible. Bedell journeyed in 1607 to Italy, became acquainted with the famous Sarpi, a man of broad and tolerant mind; then became Provost of Trinity College, Dublin, in 1623, and died as Bishop of Kilmore and Ardagh, valiantly struggling to introduce Laud's reforms into the Irish Church. Thomas Sparke, one of the Puritan advocates at the Hampton Court Conference, termed by the King a ''great nonconformist and a pillar of Puritanism,'' had so impressed James that the latter laboured himself to convince him of his errors and actually succeeded. Sparke proclaimed his change of mind publicly and issued a book entitled, *A Brotherly Persuasion to Unity and Uniformity in Judgment and Practice.*[2]

There were no doubt many moderate Puritans whose experience was similar to that of George Downame. He had kept himself aloof from the discussions about the Discipline because he saw that the result must be ''either the disgrace of my ministerie among the forwarde sort, if I resolved as now I knowe I should haue done, or the ouerthrowe of my ministerie if I should stand for that discipline. Thus was I content to remaine in suspense . . . But when of late yeares the case was so altered with the time, that a necessitie was imposed, not onely to resolue, but also to professe my resolution on the one part; and it was now expected, that I should informe not onely myself but some others also what way to take; I did then seriously enter into the studie of these things. Perhaps with another mind then some others haue done, and therefore with other successe. I considered with myselfe, that this Church of England, wherein I was called to be a minister, did hold and professe all substantial points of diuinity as soundly as any Church in the world, none excepted neither in this age nor in the primitiue times of the Church. And secondly that it hath the testimonie of all other true Churches. Thirdly that in it the means of saluation are ordinarily and plentifully to be had. And therefore to make separation from it, I tooke to be schismaticall and damnable presumption. And as touching myself. I considered that being in the ministerie, neccessitie is laide upon me. and woe be unto mee, if I preach not the Gospell. Wherefore, I must confesse I studied the controuersies, wherein the policie of our church is called into question, as one who meant, if hee were not conuicted with euidence of truth, to bee as it were the respondent, resoluing not to leaue my standing wherein God had placed mee unlesse by force of argument, I were remooued: Whereas others. hauing (as it seemeth) beene out of loue with our Church-discipline before, and in affection wholly alienated from our Church's gouernours, haue studied these things as opponents and plaintiffes. And therefore hauing sought a knot as it were in euerie bulrush, and strained at euerie gnatte, they haue picked so many quarrels against the Church, and by consequent, against their owne ministerie, as that by their opposition, the Church is depriued of their ministerie and themselues of the imployment of their giftes, they suffering . . . their places either to be destitute, or to be occupied with such as they account unprofitable ministers rather then they wil embrace, nay rather then they wil without preiudice and partiality read, what is truly said for the defence of our Church. But to return to myselfe, when with this resolution (which I am persuaded ought to be in the like case) I had studied some, which are supposed to be the chief treatises on both sides: I found on the one side, certaine places of Scripture drawne as it were by the necke to that side, a few straggling sentences quoted out of the Fathers, and as it were with oares wherried by these men (looking as one would thinke the other waie) against the full streame of Antiquitie: some pretie speeches and wittie proofes, which notwithstanding were . . . meere colours rather than sound arguments. . . Now the arguments which perswaded me I haue here set downe."[1]

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[1] ''Mr. John Burgess, his profession.'' S. P. Dom. Jac. I, VIII, no. 86, Original, signed. See also a petition from Burgess to the King, Harleian MSS. 677, f. 48 b.

[2] The copy now extant is the second edition ''newly corrected and enlarged, 1607.'' In 1608 (reprinted in 1615) came an answer, *An antidote against the Pestiferous Writings of all English Sectaries, . . . in particular against Dr. Sparke.*

The defection of such men as Sparke and Downame was naturally treated by the more radical as rank apostasy, the selling of their Lord for thirty pieces of silver. But the result of the deprivations, in fact, far from sending the moderates out of the Church brought them into it with open protestations of allegiance and statements of their conviction that the position which the Church had assumed was not only expedient but consonant with Scripture. Nor did the majority of the radicals leave the Church: they looked forward eagerly to the new session of Parliament, began preparing anew their petitions, their bills for the covert introduction of the Discipline, their measures for rendering the Episcopal position untenable. While the party had met with a crushing defeat, it had not yet given up the struggle.

In short, the effect of the enforcement of the new constitution had been precisely what Bancroft had anticipated and desired: it had forced the issue, not so much between Church and Puritans as between the two wings of the Puritan party. He had, in truth, made it plain that the Puritans could no longer claim that their practices were allowable under the law of the Church and that was indeed a great step gained. Still, though ultimately of most importance, for the nonce it was inferior to the effect of the deprivations upon the Puritan party itself. He had split that body into three parts, the moderates, who unfeignedly joined the ranks of the churchmen from conviction, once they had been constrained, by the pressure of events to consider the differences between them; the more conservative "radicals" who were willing to subscribe for form's and "for safety's sake" without intending to maintain their practice in consonance with their professions; and finally the ultra radicals who had been deprived or suspended. But another great fact had been established and one of paramount importance to the Church. It now became clear beyond doubt to those in authority that the vast majority of the English people, gentry and laity alike, were in favour of the national Church, as by law established. So much indeed Bancroft and Cecil had long believed, but the issue had never before been thoroughly tested. On the whole, the result of the deprivations was the great strengthening of the Church as an institution, the enormous increase of its prestige and dignity, an enhanced spirit of loyalty, and a firmer sense of unity and corporate life among the clergy and officials of the Establishment.

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[1] *A Sermon Defending the Honourable Function of Bishops.* 1608, preface.

CHAPTER VIII

ADMINISTRATIVE RECONSTRUCTION

The deprivation of the Puritans was only one step in the execution of the Canons of 1604 and put into operation only a fraction of their provisions. The practical application of their provisions to the administrative troubles of the Church was yet to be made. Indeed, the most important question of all awaited solution. Could Bancroft put into operation the codification which he had so successfully made? Canons in plenty had hitherto been promulgated but they had been void of good effect because they had never been adequately executed. According to the well-established traditions of the Church, Canons and ordinances were to be actually enforced by the visitatorial system and Bancroft, therefore, made in 1605 an Archiepiscopal Visitation of his Province, which did in fact accomplish much that was important. But such results were unexpected and unhoped-for.

The visitatorial system, like most administrative forms developed during the Middle Ages, seemed to the sixteenth century man a failure, partly because, thanks to the interplay of forces since the Reformation, it did not work as its framers had intended, but chiefly because, to the sixteenth century mind, it was not an administrative system at all. It was, in fact, nothing more nor less than a method of asking questions of the churchwardens. True, the scope of the Visitation Articles was as wide as that of the ecclesiastical law itself, or as the exigencies of the situation, and extended from obedience to the Act of Supremacy and the subscription to the Thirty-Nine Articles to the failure of some layman to pay the clerk's wages or to the existence of decayed planking in the floor of the church and of broken glass in its windows. Their sum and substance invariably was,—What is the condition of religion in your parish?—and any reply was germane. True, also, every member of the ecclesiastical hierarchy could visit his inferiors and must submit to the visitation of his superiors. It was a form for general use. The rural deans should visit their deaneries; the archdeacon every three months was to go the rounds of his archdeaconry; the bishop should send his officers round the diocese every year to investigate the conduct both of deans and archdeacons; while the archbishop every three years, in similar manner, ought to inquire into the diligence of all diocesan officials.

But the presentment registered at Visitation by the churchwardens convicted no one of any crime and exposed him to no penalty. It established, indeed, a legal presumption against him, but it was not a process nor even a part of the process by which he was or could be convicted. The Visitation was purely and simply a method of obtaining information, and the guilty person was punished, not for a breach of the Visitation Articles, but for disobedience to the Canons, which the culprit should have obeyed and his disobedience to which the Visitation had revealed. The Visitation Articles then were not law; they were not even orders issued by either archbishop or bishop with the idea that any one ought to obey them as law. Moreover, they inquired only into breaches of the law and assumed, in medieval fashion, that the great majority of the clergy willingly conformed to its provisions. They were *ex post facto,* and were aimed at detecting, not at preventing, crime. They were negative, not positive; the passive rather than the active element of the constitution. Nor did they furnish the only information upon which the ecclesiastical courts might proceed, for a man might be convicted quite as legally upon information given by a private informer, or could be tried *ex officio mero* upon the knowledge which the judge himself possessed.

Yet, while it was perfectly true that the old system of Visitations was cumbrous, awkward, and on the whole a failure, it was the one administrative link which bound the Church to the past; it was the one method of inquiring into the condition of the clergy which was sanctioned by precedent and tradition. Its weakness had, in truth, been at the root of the Puritan demands for the erection of a live Presbyterianism which should really rule the State ecclesiastical; had been the cause of the scorn of the bishops; and had, in turn, engendered in the minds of the clergy themselves, bishops included, a belief that, admirable as was the theology and dogma of the Church, it was, as an institution, in no sense what it ought to be and really merited no consideration. Institutionally, this very belief was the worst possible weakness. The old visitatorial system might be neither symmetrical nor desirable, but it did represent the vitality and reality of institutional life, not only to the Church itself, but to the laity. It alone stood for the continuity of administrative life, of administrative forms and traditions, and kept the Reformers in touch with the medieval church. To Bancroft, it was a potentiality, a form to be vitalised by a spirit of interdependence, welling forth from and binding together a clergy enthusiastically loyal to the Church as an institution. In the old and despised system lay, he believed, that embryo from which the new administration must be developed; out of the ecclesiastical formalism of the past could be constructed an institution of power and symmetry, harmonious with past traditions, adequate for present needs, commanding the respect of men, and representing in England the Visible Church of early Christian antiquity.

As an ultimate coercive force, the High Commission might at the moment be indispensable; but in the long run, it must supplement, not supplant, the old system. The new vigour, if it must come from such a body, should be imparted through the recognised ecclesiastical channels, for something more was at stake than the convicting of Puritans and the settlement of divorce cases. In last analysis, the reconstruction of the administrative fabric of the Church depended for its success upon the maintenance of those traditional, administrative forms which, to clergy and laity alike, were synonymous with the very institution itself. If the medieval system was moribund, it was important to know it; if vigorous use and a careful attention to details could awaken a spark of life, that was a fact of profound significance. Most of all, let no vicar or bishop attribute to the system the weakness really resultant from his own ignorance, indifference, and inefficiency; poor officials could not operate the best planned institution without confusion or trouble. The chief fault was not in the system but in the men who pretended to administer it.[1]

Such was the courageous fiat which went forth in effect, if not in actual words, from Lambeth Palace in the spring of the year 1605. It embodied a new policy, for it placed the blame for the state of affairs not upon the bishops, where Elizabeth had been inclined to put it,[1] nor upon episcopacy as an institution, where the Puritans declared the fault lay,[2] but upon the lower ecclesiastical officers and the parish clergy whence in reality the trouble came.[3] True, it was no direct and personal fault of theirs, for the men who were responsible were dead long since. The problem which Bancroft faced was not that of explaining or extenuating the state of the Church but of finding some remedy for it. In truth, the condition of the establishment rested upon the efficiency and good intentions of the parish clergy and lower ecclesiastical officials and for their failings they were now to be called to account in every thing where reform lay within their power. An ignorant man with a cure worth five pounds a year could not preach learned sermons, but he could wear the surplice, read the whole service, subscribe to the Thirty-sixth Canon, and see that the communion table was decently covered and placed as the law required. It was necessary that learned men should hold two benefices and be non-resident, but they need not absent themselves for ten months in the year and leave incompetent curates to do their work.[4] The abuses were bad, although unavoidable, but abuses of the abuses were not to be tolerated.

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[1] The Puritans will find that "the manifold corruptions which they haue taken notice of in the gouernment of our Church, being the personal defaults not so much of the Bishops themselues as of their officers." G. Downame, *A Sermon defending the Honourable Function of Bishops*, (London, 1608.) See also, Bancroft to the Bishops, April 30, 1605, Wilkins, *Concilia*, IV, 414; and his letter to the Bishops of July, 1610, in Cardwell, *Annals*, II, 158.

The Archbishop further pointed out that the Visitation had other objects than simply enforcing the law. The great enemies of the Church lay entrenched in the ignorance of the clergy as to what the law was, and in the ignorance of the higher officials as to where the law was infringed. Experience had shown that many and many a vicar who was breaking the law, thought he was conforming to it,[1] nor was he usually to blame for his ignorance. Most of the parishes had no copy of the latest Canons, many had not even a copy of the Queen's Injunctions, which, though half a century old, still contained much of the law of the Church.[2] Where the changes had been as rapid as they had been since the Reformation and where modifications, some of them of the first importance, were made every few years, by statute, by Canon, or by episcopal regulations, it was of the utmost importance that the clergy should know to what they were expected to conform, and it was far more essential that the churchwardens and laity should be told in plain terms, stripped of legal verbiage and statutory circumlocutions, what they and their vicar were supposed to observe. Even if the parish had procured the needed volumes and had read them, there was much in the early Elizabethan enactments which would bear several interpretations, and to leave the local authorities at liberty to pick and choose was a sure method of spreading nonconformity under the guise of observing the law. The difficulty of communication over the rough roads of a sparsely populated diocese prevented the spread of information as to the technical requirements as well as news about disobedience to them. Without the Visitation, the officials, comfortably seated in the Episcopal Court, would know of a certainty less about the affairs of the parishes twenty miles off than those parishes would of matters in London.[3]

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[1] The Council to the Bishops, November 7, 1573. Cardwell's *Annals*, I, 387.

[2] Especially W. Travers, *A Full and Plaine Declaration off Ecclesiasticall Discipline*. Geneva, 1574, 1580.

[3] In the following instances, the vicar or wardens were presented by the parishioners for not informing at the previous visitations of notorious misdemeanors. Ryall, (Peterborough, 1589); Parson Drove, (Archdeaconry of Ely, 1593); Kirkbecke, (Archdeaconry of Lincoln, 1594); Fendrayton, Kingston, Trumpington, Over, (Archdeaconry of Ely, 1596); City of Norwich, parish of St. Julian, 1597; Norton, Cranwell, Boothby Pannell, Louthbesk and Ludburghe, Marbroughe, Hallington, Cockerington. (Archdeaconry of Lincoln, 1600); eight cases in Calcewaithe Archdeaconry, (diocese of Lincoln, 1601); Bozeatt, (Archdeaconry of Bothwell and Higham, Peterborough, 1605); Mophall, (Archdeaconry of Ely, 1606); Camlingaye, Ely, parish of St. Andrews, (Archdeaconry of Ely, 1608-9); Bardney, Beelesbye, (Archdeaconry of Lincoln, 1611.), etc., etc., etc.

[4] Bancroft's orders on this point are in his letter to the Bishops of April 30, 1605, printed in Wilkins, *Concilia*, IV, 414, from the Registrum.

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[1] Ely, 1578, (among the Consistory Court Books) parishes of Spelfod Magna; Pampfford; Dullingham; 1579, Sawton, Madingley; 1598, Peterborough, Northampton Archdeaconry, Epton; 1605, Peterborough, Archdeaconry Bothwell and Higham, Bozeatt; 1606, City of Norwich, St. Ethelred; 1606 Archdeaconry of Suffolk, Londham; Lincoln Archdeaconry, Ludford Magna, 1611, etc., etc.

[2] *Dialogue between an old Protestant and a new Formalist*, 55, (1606). "As the subscription hath not been much urged of late for many yeares togither, save upon some few men whom the Bps favoured not: so the Ceremonyes haue growne to such a disuse in very many Churches (in some, 10 yeares, in some, 20, in some, 30, in some, more) that it would be a very strange thing and therfore also very scandalous to bring them into use againe." Some idea of the irregularities in practice can be gathered from the *Admonition to Parliament*, the *Certain Articles*, and other Puritan tracts, lately reprinted by W. H. Frere, and C. E. Douglas as *Puritan Manifestoes.* (1907)

[3] Parker wrote in February, 1567, to Lady Bacon of some shocking abuses in the diocese of Norwich and concluded "this matter had been long tossed among the people of the two places thus used. Which I knew not of, till my visitors came home again." A clergyman told him that another abuse "was common in all the country." Strype, *Parker*, I, 495.

These two fundamental difficulties, both based upon ignorance, Bancroft believed were administratively far more important than the more spectacular troubles with Puritans and Catholics, for he saw that the malcontents from conscientious scruples were few, while he knew that the nonconformists from ignorance and indifference were legion. Under such circumstances information was more necessary than coercive force and was an indispensable prerequisite to its use. Until the culprit was found, it was idle to think of punishing him. If, by frequent Visitations, the clergy were given thoroughly to understand what the law was—and the Canons of 1604 furnished a definite and unambiguous law to lay before them —if they also saw that ample power to enforce the law was latent somewhere and that it would be used if necessary, there would be comparatively few cases where more than the ordinary ecclesiastical censures would be needed to bring the culprit to his senses. It had always been easy to secure from the clergy and churchwardens presentments of the laity for all sorts of crimes, but Bancroft now meant to secure information about the clergy and about the wardens themselves.

What Bancroft therefore brought into the administration of the Church was not an innovation of form, nor an attempt to do what his predecessors had not a legal right to do, but a new feeling of institutional unity, of corporate life, a new quickening and awakening of the administrative instinct and spirit. He gave the ecclesiastical officials a common cause,—the infusion of life and vigour into the old system—and roused them to a vivid conception of what the crisis meant to the Church of the future as well as of the present. He was himself an able leader, whose knowledge and experience evoked confidence, whose ideals awakened enthusiasm, and whose clearness of vision and power of expression clothed his orders in a form easily comprehended.

Nevertheless, his determination to vitalise the old system was, in itself, an innovation, for the experience of the previous three decades had convinced most of the bishops that the Visitation was moribund. They were willing to admit that it was perhaps desirable to continue it, but quite unable to believe that it could ever be anything more than a form. If the Visitors came, if the questions were asked and answered, if the results were copied out neatly in a paper book, with a few lines of writing on each folio and with plenty of space for future entries, the officials thought that they had accomplished all that could be expected. When Bancroft visited St. Paul's Cathedral in 1598, his informants told him that the abuses had long existed, had been often complained of, but were still without remedy because the Visitation was only a form. The Bishop of Chester also declared that little attention was paid to his citations to appear and answer for misdemeanours: his commissions for reform were seldom executed and were never effectual, while at Visitations "the ecclesiastical proceedinge (was) voide of all validity and good effect."[1]

Nevertheless, while little had been accomplished by the Visitations since the Reformation, it was not due altogether to the slackness of the Episcopate. During the first years of Elizabeth's reign, Parker and Grindal had made praiseworthy and serious attempts to put into working order the old administrative system of the Church. The Visitations were held and some attempt made to prosecute offenders. But, from the sum total of their experience, Whitgift reached the conclusion that more strenuous measures were needed. Consequently, by a renewed insistence on subscription at ordination and induction, by the use of the Twenty-Four Articles for the examination of the recalcitrant, by the passage of the Articles of 1584, 1585, and 1586, and by the promulgation of the Statutes for the ecclesiastical courts in 1587, he attempted to strengthen and to systematise ecclesiastical administration. His efforts ended in the development of the High Commission as an extraordinary means for the enforcement of ordinary regulations and in the increase of the number of diocesan commissions. Indeed, several of the bishops declared that they could administer their dioceses in no other way and that so useless a form as the Visitation might as well be abolished altogether. The neglect of the Visitations, therefore, which displayed itself in the perfunctory manner in which they were made and in the failure to proceed further against the culprits revealed by the inquiries, had its root in that fundamental difficulty of the ecclesiastical administration—the necessity of accomplishing one end with the means which were intended to compass something far less considerable or difficult.

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[1] Tanner MSS. 144, f. 28, (1590) Parker wrote, in 1567, to Lady Bacon that certain scandalous clerics "bearing them great under my Lord's (the Bishop of Norwich's) authority, despised mine to be at the Church's Visitation." February, 1567. Strype, *Parker*, I, 495.

But the lack of power in the Episcopate, the want of an able leader thoroughly trained in administrative matters, the powerful interference of the Queen and the Privy Council, and the many demands on the time and strength of the various bishops for minor political tasks,—these were, no doubt, powerful contributory causes of this negligence during Elizabeth's reign.

The administrative work which Bancroft now undertook had two definite sides,—first, the codification of the Visitatorial constitution in the Canons of 1604 and the Visitation Articles of 1605; and second the vigorous execution of both in the Visitation of 1605. In an administrative sense, the Visitation Articles of 1605 marked an epoch of much the same sort as the Canons of 1604, and became certainly the most important single administrative precedent of the seventeenth century. The Visitation of 1605 infused into the old system a vitality which impelled it onward for three decades with what seemed to be constantly increasing force.

The Canons of 1604, (cix-cxix) systematized the old practice at Visitations. The wardens and sidesmen should be obliged to present twice a year, but not oftener, (although they might make voluntary presentments at any time); the yearly fee should not exceed four pence, nor should any one be liable to suit at ecclesiastical law for honestly presenting offenders. A presentment should always be made at Easter time by the wardens going out of office and should on no account be left to the new wardens who could not have any real knowledge of the condition of affairs. The old practice of summoning the wardens and asking them various questions to be answered *viva voce* was also to be stopped. In all cases, the wardens should now have a copy of the Articles for the Visitation of the year following and a copy of the oath they were to take, so that they might collect the information required before they arrived, and, above all, realise what the law was which the Bishop wished enforced and what sort of an interpretation he placed upon it. Recusants and noncommunicants were to be presented yearly without special orders from London and each rank of the hierarchy was to forward the information without delay to its superiors, so that, within three months from the date of presentment, a complete record of all recusants in England might be in the King's hands. The wardens were to be chosen once a year by "joint consent of the minister and the parishioners," and might be re-elected. Their duties were minutely defined by a long series of Canons which codified and amended the administrative orders and Visitation Articles issued during the previous half century.

The Visitation Articles of 1605, based on the Canons of 1604, were strictly in accord with previous precedent, both in substance and in form. In fact, these Articles were usually based upon the ordinance or Canon in force at the moment and embodied in their questions practically the whole of its requirements.[1] The thirty-five most important prepared for the Visitation of 1559 were taken directly from the Queen's Injunctions for 1559, and of the remaining twenty-one, fourteen were concerned with the moral sins of the laity, and four more with marriages and wills, so that all those not taken from the Injunctions were, in the main, a repetition of the old pre-reformation Canon law. In the articles of 1605, fifty-seven out of the seventy-three were based directly upon the Canons of 1604, and the remaining twelve were occupied with ordinary questions regarding recusants and minor matters of discipline. Until 1576, the enactments, to which most attention was paid at the Visitations, were the Queen's Injunctions, the Acts of Supremacy and Uniformity, the Act "touching ministers of the Church," (13 Eliz. c. 12), and the Advertisements of 1564. Then, in 1576, the gradual results of the experience of former years were embodied in the Visitation Articles of that year, which, as a codification of Church law, was the most important document issued between 1564 and 1604, and which exercised an influence on the institutional life of the Church which it is difficult to overestimate. There were, therefore, three stages of growth marked by three sets of Articles: the stage of development, 1559-1576, when the precedent was furnished by the Articles of 1559 and when considerable changes and modifications were being constantly made; the crystallisation of the Elizabethan regulations into the Articles of 1576, from which were bodily taken all the subsequent Elizabethan Visitation Articles; and the codification by Bancroft in 1605. Then opened a period which continued without alteration for twenty years, when, in the Visitation of Laud in 1635, some further developments along the same lines were introduced.

In each case, the development was carried on by the introduction of clauses based upon parts of the Queen's Injunctions, or of the Advertisements of 1564, or of the Canons of 1604, which had not hitherto been explicitly represented. Of Parker's twenty-six Articles of 1569, twelve were based on the Visitation Articles of 1559; eleven appeared for the first time as Visitation Articles to enforce parts of the Injunctions which had been hitherto neglected four were based on statutes, two on the Declaration of the Article of Religion of 1559, two upon the Prayer Book, and one upon the Advertisements of 1564. Of the whole sixty-five, only fourteen could be described as without precedent and they were not of great importance. The Articles for the Episcopal Visitation of Bath and Wells in 1583 and those for Salisbury in 1588 were taken verbatim from those of 1576, upon which were also based Aylmer's set for London, 1581-2, and the Articles of 1585 for Chichester. Bancroft followed this same practice and of the fifteen Articles of 1605 which were not derived from the Canons of 1604, half (seven) came from the Visitation Articles of 1576. In 1616 Abbot repeated Bancroft's Articles practically as they stood, though he rearranged them into what he believed to be more logical order. He also revived four articles of 1576 and introduced four more based upon certain of the Canons of 1604 which Bancroft had not considered worthy of inclusion.

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[1] The detailed evidence for these statements upon precedent will be found in the Appendix.

When, however, we turn from matters of law and precedent to the more crucial question, how much had been done, how much was actually enforced of these regulations, we enter a field of inquiry where the conditions are widely different. We exchange relative certainty for vague statements and incomplete evidence. Previous to Bancroft's time the records of Visitations were so badly kept, have been so mutilated by careless hands and rendered so incomplete by the loss of volumes here and there, that the student must confess that no amount of diligence and care can be rewarded by more than tentative results. Nevertheless, the amount of available material is so enormous that a man's life would hardly afford time for a glance at it all. It is, therefore, impossible to speak on administrative matters without some qualification of every statement and without realising that conditions differed very much in various dioceses and that any general deductions for all England are tentative.

Furthermore, our records are often entirely silent on some of the most important questions which we can ask from an institutional point of view. It is not always easy to determine who the official was that conducted the Visitation of whose record the volume in hand formed a part. Was it the Archdeacon, or the bishop's Visitor, or the archbishop's Visitor? The character of the entries gives no clue, for investigation shows that where we can determine the status of the official, the entries are of the same type. The wardens presented and after all there was only so much to present. although they ordinarily gave the archbishop a longer bill of *comperta* than they returned to the bishop or to the archdeacon. It is even more important and far more difficult to tell by what authority the official was proceeding. Was the archdeacon using his own authority or had the bishop delegated to him his episcopal powers, or entrusted him by special letters missive with unusual functions for the time being? Did the official derive his warrant from the archbishop's visitatorial powers, or from a special commission from the archbishop, from the diocesan High Commission, from the general High Commission at London, or from a warrant to the bishop or archbishop from the Privy Council? The archdeacon himself might at any one moment have power from two or three such sources and, indeed, he ordinarily had, besides his own office, a seat on the diocesan High Commission and a place on the bishop's visitatorial staff. It is, in fact, impossible to determine which powers he exercised at any one moment, to see whether or not he exceeded them, or even to tell with accuracy what his powers were. Certainly all books marked *ex officio* are not records of the High Commission, as the inexperienced have been only too ready to conclude, for any ecclesiastical official might on occasion proceed *ex officio mero* and try in that manner any case within his cognisance. On the other hand, there is nothing to prove that such a volume was not a part of the records of the diocesan High Commission. The matter cannot be demonstrated one way or the other in our present ignorance of the exact duties of these local High Commissions.

Again, these records, which have been designated for want of a better name the Visitation Records, are not the original presentments made by the churchwardens, but a selection from them (and usually an abstract of the actual statement) prepared by one of the Visitors for later proceedings in the Consistorial or Archidiaconal Court. What we have, therefore, is not what the churchwardens said, but only those items which some man, of whose capacity, diligence, and probity we know nothing, thought worth preserving. We can be sure that everything we have was presented, but we can be nearly as positive that what we have is not all that was presented; and we should like to know what proportion the abstract bears to the original lists, how many items were furnished by the churchwardens, how many by parishioners, and how many by the vicar himself. There is good reason to believe that, in most cases, on account of the general inability of the wardens to read or write, the list was delivered *viva voce* to the official, who wrote down on the spot what he thought pertinent to the object which the bishop or archdeacon had most in mind at that particular time. In many cases, as in the Bishop's visitation of Peterborough in 1591, we find only *omnia bene* for parish after parish, though occasional entries under those very words make it certain that the wardens presented a list of complaints and perhaps a long one but that the official thought in sum and substance it contained nothing worth proceeding with. Sometimes by this method the very volume, which we meant to compare with some other of different date, has been so reduced that it is impossible to compile good statistics from it. In other cases, where the book is not missing, it has not been arranged under deaneries and therefore can not be used, for there is no one year in which the records forthcoming seem to be complete for the whole diocese.

Another difficulty to be contended with is the lack of information on the points which we particularly desire to investigate and the superabundance of detail about incontinency, adultery, slander, scolding, drunkenness, brawling in church, working on Sunday, and defiling the churchyard, which easily forms two-thirds of the total entries preserved to us. All the statements, furthermore, are very brief and seldom give us any chance of tracing the further history of the case. It thus becomes evident that our information is, upon the points of most importance, not only scanty, brief, and detached, but also very indirect, and hence easily misinterpreted and accorded either more or less than its actual significance. Only by the patient study of scores of cases can a sufficiently detailed understanding be acquired to appraise the evidence on any point at its true value, and, even then, the most expert and conscientious toiler must always fear that he has overrated some facts or omitted others of importance. He cannot even rest assured that the statements, or lack of statements, underneath each entry of the proceedings taken in it by the courts, were all that was done, for it is quite possible that the offender was proceeded against before the local High Commission or before the general High Commission at London, or was attended to by personal letter or messenger from the bishop. Of course, the fact that this would happen only in the important and serious cases does not deprive it of its significance, for it is just those cases of disobedient and nonconformable ministers and churchwardens in which we are most interested. Nevertheless, it seems improbable that such a practice could have been extensive for it was often said that many of the more important failings had already been presented many times without any amendment. This seems to explain adequately that puzzling blank in the records and makes it reasonably certain that, in most cases, previous to Bancroft's archiepiscopate, nothing had been done by any authority on the facts presented.

In all these hundreds and hundreds of volumes little appears to answer those questions we would most willingly ask. There is nothing to tell us exactly what the archdeacon thought his powers were, to inform us in what relation he stood to the bishop's commissary, what things he did himself and what he always left to the bishop, and whether the results of the bishop's and archbishop's visitations were proceeded with—in addition to the penalties imposed by the archbishop's own visitors—in the consistory court or in the archidiaconal court. Nor do we find ourselves more enlightened upon the relations of the archdeacon to the bishop, to the archbishop, to the local High Commission and to the general High Commission at London. It is easy to say that he was of course outranked and overruled, but *were* his decisions ordinarily overruled on appeal, *did* the High Commission, local or general, interfere with him or assist him when he did not ask for it or did they wait until he had exhausted his powers and called upon them as a last resource? On the other hand, *did* the lower ecclesiastical officials regularly have any direct relations with the greater luminaries of the ecclesiastical world or were they always approached through the bishops? Letters we have in some abundance, preserved by Strype, by Fuller, and in the chief manuscript repositories, but they relate almost invariably to exceptional cases and are not concerned with that regular course of ecclesiastical routine which we should like to investigate. In the present writer's mind, however, there is a growing conviction that there was no efficient and regular routine administration, that all the institutional life of the Church there was, at least before Bancroft's archiepiscopate and very probably (though not so certainly) during it and after it, was sustained by unusual and extraordinary practices outside the normal ecclesiastical machinery. Things were accomplished by personal letter or order or interview, without the use of any ecclesiastical process and were made effective, not by fears of excommunication or of penance, but by the wholesome threat of the High Commission, of the Star Chamber and of the Privy Council, which, however, were actually called into requisition only in a few instances because the threat was usually sufficient. As for expecting to find coercive authority inherent somewhere in the old administrative system, that seemed to be an idle dream for, apparently, there was none. Bishop after bishop reiterated the strain with more or less plaintive variations, that they had no power.

This leads to the interesting question of how far a churchwarden could be intimidated into giving information he would have preferred to withhold. We do not know but it seems very unlikely that any were ever frightened into presenting, for, besides the probable lack of coercive authority, they refused in many cases to appear at the Visitation at all[1] and in numerous instances their parishioners presented them for failing to tell of facts well known in the town. Perhaps they in turn informed the higher officials of facts which the townspeople would have preferred to have left untold but, inasmuch as they were nominally at least chosen by the parish, they probably agreed with the opinions of the majority of the villagers. This verdict the Visitation Articles, on the whole sustain very well. What the capacity of the majority of wardens was, whether they could read and write or were, as a class, ignorant and incompetent, is not definitely ascertainable, though what evidence there is points strongly to the latter alternative. Their original presentments, if we had them, would doubtless reveal much and we should very likely find, where they were delivered in writing which seems to have been seldom, that the vicar had the penning of the paper.[1] We can only guess at the relations of the wardens and the vicar, of the wardens and the parishioners and, although in regard to the relations between the vicar and the parishioners we have pretty positive evidence that they seldom sympathised with his liturgical irregularities, we are still totally in the dark as to the ordinary authority and influence he exercised. No doubt it varied widely according to the size of the parish, the character of the vicar and of his people, and the section of England in which they lived. Probably, as a man superior in education and ability to the farmers and peasants of his congregation, he swayed the politics of the village and was, in his turn, to no inconsiderable extent, dominated and influenced by the gentry of the neighbourhood and particularly by his own patron.

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[1] It cost them a journey, several days' time, and at least four pence in fees, a considerable sum in 1605.

The answers to these problems, if they are ever found, will appear only when the great mass of manuscript materials now in the episcopal registries has been carefully sorted and tabulated, studied by specialists and the results placed before students in detailed monographs. But, with these general and sweeping qualifications, the few tentative results here set forth seem, as far as they go, to be clear and sufficiently well established.

To give a more human and a more definite cast to these complex and elusive problems of administration,[2] it seems best to give the history for some years of a typical parish as told by the Visitation books and, for this purpose, no parish seems better adapted than that of Holy Trinity in the town of Ely. The records are complete, well kept, and unusually full for the date at which they were made and the number of people concerned. Neither Puritanism nor Catholicism tainted the parish; it was not so isolated that the officials could be exonerated for some lack of diligence in their oversight of it, but, being at Ely under the very eyes of the bishop and the archdeacon, we should expect here, if anywhere in the Church, to find conformity, vigour and energy of institutional life. Their problems were precisely those of the Church in general and, to one who has read many hundreds of pages in Visitation books, the story seems like an epitome of the record of all England.

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[1] We have some few sheets of the original *comperta* scattered among the Consistory Court Records at Ely and Norwich. They are usually signed by the vicar.

[2] We have been so much occupied with the exceptional, and the darker side, that we tend to view the ecclesiastical landscape through a cloud of misconceptions which distorts houses into castles and creates giant oaks out of the familiar apple tree. There is nothing more difficult to retain, while studying an institution through the medium of a series of statements which are professedly exceptions to the rule, than a sense of proportion and an ability to divine beneath the crust of excrescences the true state of affairs.

By the aid of the accompanying tables, we can see how much beyond any of the previous high water marks of administrative vigour, the tide of Bancroft's influence surged. Under Grindal in 1582 only eight entries were registered on the book, but under Whit-

Parish of Holy Trinity, Ely

	1582	1584	1601	1603	1604	1606-7
Number of cases presented	8	16	125	29	48	142
Incontinency	5	13	27	15	21	35
Refusal to attend church	2	3	4	2	5	2
Refusal to take communion	—	—	10	—	1	30
Sabbath Breaking	1	—	25	6	12	22
Drunkards	—	—	—	—	—	13
Scolds	—	—	5	—	4	4
Standing excommunicate	—	—	—	—	—	3
Not paying the clerk's wages	—	—	—	—	—	9
Debt	—	—	—	—	—	2
Refusal to pay for repairs of the church	—	—	2	—	—	2
Annoying the churchyard	—	—	3	—	—	4
Church decayed	—	—	—	—	—	1
Fled from punishment	—	—	7	—	2	—

Total Cases Presented in Various Parishes of Ely Archdeaconry in Various Years

	Chatteres	Sutton	March	Littleport	Mophall	Wentworth
1601	30	43	27	57	18	8
April, 1603	—	—	—	—	1	2
June, 1603	2	no bill	no bill	17	1	omnia bene
Aug.-Sept., 1603	3	—	—	—	no bill	ditto
December, 1603	—	4	—	—	omnia bene	ditto
March, 1604	4	22	19	—	ditto	1
June, 1604	—	25	—	—	2	3
1605-6	56	60	31	51	23	9

gift, two years later, that figure was doubled. In 1601 the total entries were one hundred and twenty-five which fell in 1603 to twenty-nine, rose under Bancroft's stimulus to forty-eight, and in 1606, at the first archidiaconal Visitation after the archiepiscopal Visitation of 1605, soared to one hundred and forty-two. Surely from eight to one hundred and forty-two is a great rise and the increase from one hundred and twenty-five is considerable. In other parishes, where the work of the officials had not been previously as good, the increase in Bancroft's time over all preceding dates in gross number of presentments was from twenty to sixty per cent.

As has already been hinted, the persons presented, previous to the year 1604, were usually not proceeded against at all and, where anything was done, a simple citation and hearing, followed in rare instances by penance or excommunication, was all that resulted. Bancroft, however, was resolved not only to have offenders presented, but to have them punished as severely as the law would allow. Where nothing had been done before, it became not unusual to find, under the record of the presentment, notes of from two to eight separate processes undertaken against the culprit. Robert Harrison had committed several moral crimes and, for absolution and various other fees, owed in 1606, 23s 8d. On June 19, 1606, they cited him before the court to pay it and, when he did not appear, continued to issue citations on 14 August, 1606, 16 December, 1606, 2 April, 1607, 28 June, 1607, 18 August, 1607, I December, 1607, 15 March, 1607-8. Anthony Hynmore's case is precisely similar. Indeed, far from being isolated and unusual instances, the Visitation book of 1606 records two cases in which eight or more writs were issued; three in which from six to eight were sent out and twenty in which from four to six were used and, in most of the remainder, two at the least; that is to say, in twenty per cent. of all the cases noted in that parish in 1606, from four to six writs were issued to follow up the disobedient culprit. There was to be no more immunity from punishment if the Archbishop could help it and, if disobedience and indifference to the ecclesiastical censures and writs could be overcome by reiteration and persistence, Bancroft intended to know it. It cannot be too often repeated that this vigorous enforcement followed a period of nearly half a century, during which little, if anything, had been done. While the number of presentments increased, in all England, on an average about ten per cent. above the highest previous number, the gain, in cases proceeded with, was, at a conservative estimate, seventy-five per cent. greater than ever before.

Nor was the Archbishop satisfied with an energetic prosecution of the men and women brought to the ecclesiastical bar. All the indictments within the past five years were ransacked and in the more serious cases proceedings were at once instituted. In 1601 the wife of William Terrell had been presented as a woman of notorious evil life, and on February 17, 1601, a citation had issued to her, and on May 19, 1601, some further step had been taken, but there the matter rested until August, 1604, when a new citation was sent to her.[1] This having been ineffectual, another was served December 14 and on March 14, 1604-5, she was excommunicated; on June 16 1605 was denounced as excommunicate. Robert Banck and Agnes Banck were separately proceeded against in the same way on approximately these same dates for a crime committed in 1600. The minister of the parish of Holy Trinity had been absent during a part of the year 1603 for some unexplained reason, and John Baker supplied the pulpit in his absence to the discontent of the parishioners, who presented him in that very year "for yt he did not upon the Sabaothe and holiidayse weare his Surplice, neither marrye with the ring in marriage, neither signe with the signe of the Crosse in baptizing of children." The officials cited him to appear on August 16, 1601 but apparently did nothing further in the case. Then, on July 10, 1604, a new citation issued and when the apparitor, who was sent to serve it on Baker, declared the man could not be found, a *viis et modiis* was decreed. On August 29, 1604 a new decree was finally served upon Baker, who excused himself on baseless pretexts to the apparitor whenever he appeared. He was therefore pronounced contumacious and forbidden the church; on December 13 the vicar denounced him and the court suspended him from his functions as a minister.

Nor were these instances without parallel. In 1604-5, the officials took action, in this single parish of Holy Trinity, in nineteen cases presented in 1601, in seven presented in 1603, and in twenty, out of a total of forty-eight, presented early in 1604. In the parish of

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[1] These cases are still from the records of the parish of Holy Trinity, Ely.

March, in this same diocese, twenty per cent. of the cases presented in 1601 were acted upon in 1604-5.

This new vigour of administration showed itself in every subject which could be presented at a visitation. All cases were proceeded with irrespective of subject: the incontinent maid, the shrewish wife, the tippler, the swearer, all found that the day of immunity, which they had shared with the nonconformable ministers and the careless churchwardens, had passed. Presentments for moral offences of the laity, incontinence, adultery and the like had always been numerous and continued to be, not only because the parties were articled against separately, so that one instance was recorded on the books as two cases, but because such offences were common. The next categories, in point of number, were the breaking of the sabbath, the failure to attend church and absence from the communion. But a great part of the records were always filled with complaints against scolds, drunkards, people who ''annoyed the Church yard with ashes''[1] or ''with a muckhill and hogges;'' against this man ''for beating of his wife and livinge disorderly to the great offence of his neighbors and by scoldinge and brawlinge;'' against that man ''for disquieting the minister in the administering of the communion with scolding and brawling;'' or because he ''thrust the wyef of Miles Cawlder out of her owne seate in the sermon tyme.'' Then, there were those who told the minister ''that he lyed, and that he had noe more Creditt then his Dogge;'' those who informed the churchwarden with a sixteenth century directness, that ''he was as fit to be an officer as to be hoggard of the town;'' and those who shouted out, when excommunicated for crime, that ''knaves put me in and knaves shall put me oute.'' When the warden went to exhort people to attend church he met some who declared flatly that they would never come to church again;[2] others who said that they would come when they pleased or when they were good and ready;[3] and still another, with a frank and amiable character, who said that he found it irksome to attend divine service more than once a month. As far as can be ascertained, there were no recusants at Ely and absence from church was occasioned by no more recondite or profound reasons than will explain the emptiness of many churches at the present day. The town of Ely was also well provided with those who, refusing to observe the sanctity of the sabbath and of holydays, proceeded with their carting, or mowing, hunting or fishing with entire indifference to the monitions of churchwardens and archdeacons. About twenty per cent. of the presentments at Holy Trinity were regularly concerned with such matters and in the neighbouring parish of Littleport, out of fifty-one presentments made in 1606, thirty concerned sabbath breaking.[1]

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[1] These examples are still from the parish of Holy Trinity, Ely.

[2] One Ayres was indicted from Ely, Holy Trinity, in 1601 ''for refusinge to come to his parishe Church and beinge thereunto advised by the Churchwardens he answereth that he will never come there again.''

[3] A man at Sutton (Ely archdeaconry, 1605) declared ''that he would resort to his parishe Churche but when he thought good.'' Nicholas Tomas of Wisbeach (Wisbeach archdeaconry, 1601) told the warden that ''he wold come to Church but once in three weekes in despite of him or any other.''

With the advent of Bancroft we also find a change in the class of cases presented. In 1606 appear at Ely presentments that tell of the decayed state of the church building, the tumble-down condition of the churchyard fence, the lack of a proper font for baptism, and of a ''decent'' cup for use at the communion table.[2] The church officials first begin to be noticed in the Visitations, as a regular practice, for previously the only records we possess contained much against the laity and very little, if anything, against the practices and ideas of the clergy and officials, except in scattered and unusual instances and except in the strongly Puritan districts where the nonconformity of minister and wardens was easily apparent. This new note is very clear and significant of the new policy which had taken its seat at Lambeth.

This same change, which appears in so striking a manner in the records of the parish of Holy Trinity at Ely, was equally clear, though in varying degrees and with many local differences, over England as a whole. The Visitation records, taken by the archdeacons, bishops, and archbishops during the six years of Bancroft's archiepiscopate, are equal, in number of pages and actual feet of room required to store them, to all those which had accumulated in the previous fifty years and if, in some dioceses,

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[1] The idea of punishing people for a breach of the sabbath was therefore no invention of the Puritans.

[2] These complaints were by no means new. A representative set of entries is: Cumberton, Ely archdeaconry, 1578; Lincoln archdeaconry, 1594 passim; Westwrathing, Ely archdeaconry, 1596; Calcewaithe, Lincoln archdeaconry, 1601; Emmeth, Wisbeach archdeaconry, Ely, 1603; Elme, Wisbeach archdeaconry, 1605; Beccles, archdeaconry of Suffolk, 1606; Barnham, archdeaconry of Sudbury, 1611.

Subjects Presented at Various Archdeaconries

	Lincoln	Lincoln	Ely	Norfolk	Suffolk	Sudbury	Sudbury
	1589	1600	1596	1597	1606	1606	1611
No. Parishes Considered	86	88	?	38	155	180	171
Incontinency	55	52	70	20	150	191	171
Refusal to attend church	18	4	31	5	42	75	68
Refusal to take communion	8	5	23	7	165	105	132
Sabbath breaking	1	11	19	7	10	37	13
Administrations	—	3	16	8	10	10	6
Refusing to pay church rates	4	27	15	2	9	5	6
Standing excommunicate	1	1	28	18	52	72	14
Scolds	22	7	4	—	7	3	8
Brawling	9	2	2	—	12	4	1
Drunkards	4	1	1	1	11	19	25
Churches decayed	6	11	—	—	22	—	—
Recusants	—	—	3	2	34	99	95
Pluralities	—	—	—	5	—	—	—
Schoolmasters not licensed	—	2	—	2	7	—	—
No table of degrees of marriage	—	—	—	4	5	—	—
No tablet of Ten Commandments	—	—	—	2	6	—	—
Working on holydays	—	—	—	—	1	4	—
Not paying clerk's wages	—	—	—	—	1	—	—
Refusal to pay for repairs in church	—	—	—	—	5	4	—
Wardens' accounts not made	—	—	—	—	5	—	—
Vicar non-resident	—	—	—	—	4	3	1
Refusal to be catechised	—	—	—	—	18	—	—
Parson does not catechise	—	—	—	—	—	—	8
Registry has no lock	—	—	—	—	—	—	2

the proportion was somewhat less than this, in others it was greater. Thus, in a number of parishes in the diocese of Ely, we find that at a conservative estimate, the increase in number of presentments was twenty per cent.; in the city of Norwich it was sixty; in the archdeaconry of Norwich, fourteen. The increase is proportionally greater in individual dioceses than it was over the whole of England and greater in single parishes than in whole dioceses, for of course much still depended on the diligence of local officials. There had been a goodly number of careful and diligent men before Bancroft's day, or the Church would never have been administered at all and he would have had no one capable of carrying out his orders. Perhaps a ten per cent. increase over the whole of England would approximate the truth and would be sufficiently striking when we realise that this great gain in efficiency was accomplished by the influence of one man almost instantaneously. Probably, however, the proportion of cases proceeded with under Bancroft as compared with the number followed up by his predecessors, should be put as high as sixty or seventy-five per cent., while the promptness, rapidity, and severity of his procedure bore no comparison whatever to the feeble, halting efforts of preceding administrators.

An inspection of the tables adjoined reveals many points of interest. The presentments for incontinency, for refusing to attend church, for refusing to take the communion, for the nonconformity of the minister and for standing excommunicate, show great increase over the whole of the fields inspected. Recusants rose enormously, from practically nothing at all, to what was probably in Protestant shires a reasonably full list of all those who openly professed allegiance to the Pope. Likewise those who refused to pay for the repair of the church were adequately enumerated, denoting the greater emphasis now laid upon undoing the ravages made by half a century of neglect and pillage. The lack of monthly sermons, which had been considerable in Norfolk and Suffolk, seems to have been remedied in some degree before the year 1606. Where, in Norwich Archdeaconry, out of fifty-one parishes eighteen had no monthly sermons in 1597, all but eight had been supplied by 1606, while in the Archdeaconry of Suffolk, out of one hundred and fifty-five parishes in 1606, only eighteen were deficient and, in the Archdeaconry of Sudbury, out of one hundred and eighty parishes, only five lacked their monthly sermon.

We also begin to read in the Visitation Records that the missing articles for the church have been provided or that the chancel has been repaired—a new and strange entry, for, prior to 1604, we find scores of cases where the wardens declared that the matter had been many times presented and yet no remedy could be had. Where an amendment had not been made, excuses were forthcoming. The wardens of Tyd. (Wisbeach Archdeaconry, 1605) explained that the seats in their church were not yet fixed "because noe levye cane

Subjects Presented—Archdeaconry and City of Norwich

	Archdeaconry		City	
	1597	1606	1597	1606
Number parishes considered	51	54	37	37
Incontinency	22	65	18	26
Refusal to come to church	22	9	11	25
Refusal to take communion	11	23	18	71
Pluralists	26	—	4	—
Practicing physic without license	13	—	—	—
Schoolmaster not licensed	9	1	10	—
Detaining church money or rates	10	4	5	—
Sabbath breaking	6	10	17	11
Need box for the poor fund	6	—	—	—
Need chest for the vestry	4	—	—	—
Need a table of the degrees in marriage	6	—	—	—
Standing excommunicate	2	20	3	7
Recusants	—	8	—	4
Drunkards	2	2	2	10
Brawling	—	7	—	3
Scolds	1	1	1	4
Administrations and probate	2	6	2	1
Working on holy days	—	1	—	—
Church wardens ordered to produce their accounts	—	2	—	2
Refusal to pay for church repairs	—	9	3	10
Annoying the churchyard	—	—	7	—
Churchyard not fenced	—	—	—	1
Servants not sent to be catechised	—	—	—	13
Refusal to pay clerk's wages	—	—	—	6
Church decayed	11	9	7	—
No monthly sermons	18	8	—	—
Ministers presented for some offence	11	22	17	7

be gotten or made for that purpose,'' while from Abington Magna (Wisbeach Archdeaconry, 1608) came the statement that they had bought all the books except the homilies, which they could not purchase anywhere; this proving to be the case, they were freed from all blame. The good effect of the new régime appeared on every side. The wardens of Brandeston (Archdeaconry of Suffolk, 1606,) reported that their vicar, John Lowes, (a man whom the previous Visitations had shown to be inclined towards Puritanism) ''hath not allwayes used the prescripte forme of common prayer prescribed on the boke. but for the most parte since the publishinge of the Cannons he hath obserued the same.'' They also said that "there haue been sentences of Scripture placed in the said church." The vicar of Bures (Archdeaconry of Sudbury, 1606) certified that "the cushion and cloth were provided for the pulpit." The wardens from Barklowe (Wisbeach Archdeaconry, 1608,) said "that the Carpett for the Communion table is olde and torne and that they are purposed out of hand to provide a newe one." For years the church at Madingley (Archdeaconry of Ely) had been in bad condition and very little notice had been taken of it, to the great discontent of some in the parish, but now at last, in 1608, the wardens replied to the archdeacon's inquiries, that the church was "out of repaire but being mended."[1]

Best of all, the nonconformable ministers were removing the technical charges against them for, where William Burton had been presented in 1608 for preaching without a license, an entry of a few months later informs us that "he is now licensed." Anthony Watson of Watford, Hertfordshire, who was presented by his congregation for not wearing the surplice and clerical dress and was censured accordingly by the Bishop, actually conformed and "provided his habit according to the Canon."

Even if what seems to be a symptom of increased energy, in the clergy itself, was only the result of greater diligence in the church official who kept the records, that is in itself, from an administrative point of view, a fact of the very first importance. Until the officers of an institution respect it, enforce its laws strictly, observe its rules and forms to the letter, it is idle to expect any one else to regard it as powerful or worthy of obedience.

The new régime had several perfectly well defined objects. First, the forms were to be made a reality; there should be no more show of presenting men without giving any information and those informed against were to feel the weight of the ecclesiastical law. If a layman offended, he must suffer, but his clerical neighbour should no longer be passed over in silence. Secondly, all the former presentments of serious offences, which had not yet been punished and which were not committed too long a time before, were to be dealt with as if they were new presentments. The law was to be enforced to the best of the archbishop's ability. The Visitation would still result chiefly in the presentation of laymen for minor offences, for the vicar and the wardens would not normally bring to light their own delinquencies; but a new day had dawned: henceforth, no one was to be exempt, the authority of the Church must be maintained. But there were certain topics upon which especial stress was to be laid. For the six years of Bancroft's archiepiscopacy, the great question, reiterated again and again, was, is your church decayed and whose duty is it to put it in repair? If the obligation rested upon the parish, as it often did, the wardens were directed to assess rates and the number of cases where men refused to pay them, evinces how widespread was the attempt to collect them.[1]

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[1] The wardens of Bozeatt (Archdeaconry of Bothwell and Higham, Peterborough, 1605) reported that the "Kinges Armes is nowe a setting up and the workman is to white the Church, also we are provided of the Book of Homilies." The vicar of Seagrave (same reference) reported "that they have provided the booke of comon praier, the booke of Cannons; and the Carpet for the Communion table."

To Bancroft, no church could possess institutional respectability whose service was not said in a clean, sound building with the minimum vestments and altar ornaments in a reasonable state of order and decency. If there really was no surplice or cloth for the communion table, no person could be blamed for not using it; if there was no copy of the Homilies nor of the Canons, the vicar could not be severely censured for not reading them or for not obeying their precepts. The churches must provide the few articles which lent dignity and impressiveness to the service. The clergy must wear that dress which clearly distinguished them from the laity, for if the Church, as a visible institution endowed with the tradition of a great past, was to bulk large before the eyes of Englishmen, its ministers and officers must appear in public in a garb which at once proclaimed their station in life, and pointed significantly to the gulf which separated them from the laity. Bancroft was alive to the fact that the people were still medievalists, who looked at externals and sought through them to connect themselves with the great and glorious. To represent the Church to the masses as their imaginations pictured it to be, not only must the service be dignified and dramatic but the clergy, as the representatives of a great institution and of the traditions of Christian antiquity, must to the naked eye be distinguishable from ordinary men.

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[1] At Thetford, in the Archdeaconry of Ely, 1606, 12 men refused to pay for the repair of the church: at Witcham in the same archdeaconry and year, 11 refused; at Leverington in the Archdeaconry of Wisbeach, in 1605, 14 men refused to pay for "beautifying the Church." Most of the amounts were small which were thus refused—6d. or 9d.—but some were quite considerable, 34s., 10d.; 6s., 6d.; 5s., 4d.; 4s., 4d.; 18d. Some rates were as low as 2d.

Among all these plans, however, the Archbishop never forgot the matter of ecclesiastical incomes. The Visitations show unceasing effort to learn whether a terrier (or survey) of the lands of the glebe had been made; whether the woods were well preserved; and whether any long leases of church lands were outstanding. In the courts and elsewhere no small part of the confusion over incomes arose from the lack of definite records of the situation at any date, whose absence, of course, made it difficult to decide what the custom was a decade previous and led to very annoying difficulties for ecclesiastical litigants. The parish records of every sort must be carefully kept; the register of births and marriages; the terrier of lands; the lists of leases; the statement of the tithes and of the terms of any commutation with the date of its making. With an eye gazing far into the future, Bancroft saw that only in this way could the Church be saved from the recurrence of the situation with which he himself was struggling.

For years, all sorts of tales of the venality of church officials had been bandied about in Puritan tracts, petitions to Parliament[1] and the scurrilous broadsheets of the day, until the very reiteration began to carry conviction. We find similar statements in the Visitation Records which are more trustworthy, and, though less extreme are still bad enough. A general bill of complaints, drawn perhaps by a Puritan, said that the whole aim of ecclesiastical administration was not to reform the disorders but to collect fees. "If any such offence be then detected or defaults in churches presented, the said inferior officers do then most commonly grant to the offenders (being first cited before them) a day to amend it. At which time, they grant another day: and so from day to day, do so defer and delay the time by giving days of respite (only for their own gain) that in the end the offender clean escapeth unpunished and the default never amended. For the giving of which days of respite, they take at every time of the offender for every day so given, 6d. at the least."[2] Mr. Mosgrave of Elme, in the Archdeaconry of Wisbeach, 1605, was presented for "sayeing that it were but a folly to present Mr. Gyles the vicar there for that he was at a fee with the Courte for 40s. a yeare and that so the comon fame was and is." "George Dayvs and George Butler (of the parish of Coton, Diocese of Peterborough, 1605) they both did say it is a smale matter to come into the bawdy courte (archdeacon's court) for they did say, for 17 potts of ale or beare they would come out of it when they listed. Further these parties did say unto Thomas Leftchild, that, if so be he must needes come into the courts, it were his best course to agree with the Judge of the Courte and the rest of the officers for shoes or shoe leather and diuers other sundry unreverent speeches in disgrace of the court."[1] From Norfolk comes a tale on the other side. Milo Whaill, an apparitor, "cited a pore woman to the Commissioners courte, beinge Administratrix of her husbandes goodes, Thomas Durrant, to bringe in an accompte and she appereinge, he afterwards brought as he said an excom: and compelled her to giue him 18d., parte whereof she paide (her poverty beinge so greate she could not paye all.)"[2] Certainly Mr. Giles, who was probably a Puritan, was often presented for nonconformity and was never punished until Bancroft's day, but all the men like Whaill whom the officials could find, were severely handled and Bancroft himself was particularly harsh with such culprits. Nevertheless, so much smoke must have risen from some fire and doubtless the Archbishop's wrathful anathemas did not prevent the underlings of the ecclesiastical courts from carrying on a great deal of disreputable business under his very nose. So far as orders, letters, and canons would go, he did his utmost to stop it,[3] but the best laws in the world, the firmest and best planned institutional fabric, cannot prevent the incompetence, greed, and negligence of its officials from working mischief.

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[1] A choice collection will be found in the *Admonition to Parliament*, the *Certain Articles*, and the *Marprelate Tracts*. They are however so extreme that even contemporaries were incredulous.

[2] "*Abuses greatly grevious to the Queenes Majesties subjectes.* (1597-(?) or 1601 (?).) Strype, *Whitgift*, III, 376.

In the method of Visitation Bancroft made an innovation of great significance. Previously, the Archbishop's Visitors had been his own officials, with certain divines and civil lawyers sent from

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[1] This comes from a miscellaneous volume among the Consistory Court books.

[2] Marsham, Norfolk Archdeaconry, 1606.

[3] His were by no means the first: See Parker's *Visitation Articles*, of 1569, no. 25, 26, 27; Grindal's *Articles of* 1576, Nos. 62, 63, 64; and Bancroft's *Articles of* 1605, No. 39. Also Bancroft's *Letter to the Bishops on non-residence* of April 30, 1605, (Wilkins, *Concilia*, IV, 414) and on pluralities, July 1610, (Cardwell's *Annals*, II, 158.) *Canons* of 1604, CXIX-CXXXVIII.

London, men who were not acquainted with the country nor with its clergy and who were therefore not qualified to conduct their search rapidly and so to the best advantage. They did not know what to look for nor where to find the worst nonconformity, though, of course, if the only object of the Visitation were still, as it had been in the Middle Ages, to inspect the work of the local officials, it was necessary that they should not be allowed, by their own presence on the bench, to intimidate men from presenting them and thus to conceal their own faults. To Bancroft's mind, however, the chief object of the Visitation, next to revealing the condition of the clergy, was the spreading of information of what the law was and the manner in which the authorities at Lambeth wished the administration conducted. He wished to investigate rather the lapses from grace in the parishes than the faults of the diocesan officials themselves. Previously, when the Archbishop's Visitors had departed, the local episcopal officers knew no more about the state of their diocese than they had before and were equally ignorant of the exact reading given the law by the archiepiscopal staff. Now, by combining the bishop, his vicar-general, commissary, and chief clergy with several officers from London, Bancroft brought local knowledge into contact with metropolitan experience and methods, helped his own men to find quickly the difficulties, gave to the bishop and his officers a view of the condition of their diocese as seen through the archbishop's eyes and, best of all, gave the local officers by this close association with their colleagues from London, a knowledge of new methods to be pursued and a comprehension of the personality of the men with whom they were continually dealing by letter and messenger. Through this means, he brought the local and central administration into close contact, to their mutual profit, and exorcised that hostility and suspicion which had too often prevailed among the ecclesiastical hierarchy.[1] Let us all stand together and help each other in our common endeavour for the great purpose of uplifting the Church of Christ in this realm of England, was Bancroft's motto.

He also introduced a new idea of the value of administrative experience, insisting that only competent men should be advanced to positions of trust and that men should be kept long enough in office to learn the duties of the place.[1] When he assumed the bishopric of London he had filled his staff, so far as he could without damaging its efficiency by depriving it of that local knowledge which can only be gained by long acquaintance with a given territory, from the men whom he had trained in the High Commission, and when he removed to Canterbury, he took them with him, partly because of their intelligence, but more because they understood his methods and policy. Sir Edward Stanhope, Sir Daniel Dun, Sir John Bennett, John Cowell, Dr. Edward James, all of them men of great ability, high intelligence, and attainments recognised to such an extent that their writings on civil and ecclesiastical law were held authoritative by European experts, formed the backbone of his administration and to their energy and worth no small part of his success was due. The efficient administration of a great institution depends often as much upon the capacity of subordinates as upon the organising ability of a great brain at its head. Bancroft was not only a leader but a great judge of human nature. Vaughan and Ravis, who succeeded him in the See of London, were not men of theological learning or of any particular reputation, but they had administrative ability coupled with much tact and performed their difficult functions, at a most trying epoch, to the admiration even of the Puritans.[2]

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[1] His register affords abundant proof of this. Wilkins has printed, in his *Concilia*, IV, 414, 415, Bancroft's letter to Dr. James, the Visitor of the Diocese of Bath and Wells, dated May 28, 1605.

Some men of value he sent into the country where they were sorely needed: Dr. James was sent to the diocese of Bath and Wells as the Bishop's chancellor, for Mountagu, the Bishop of that See who was a favourite of the King, spent most of his time at Court, and, although a clever writer and an entertaining companion, was a man of small ability. This was another innovation upon the Elizabethan idea, that any man of ordinary intelligence and known political loyalty was qualified to hold most ecclesiastical positions. Although Whitgift and Aylmer had not acted on such an idea, it was none the less very wide spread. The greater influence which Bancroft was able to exercise in the appointment of officials and even bishops,[1] was a factor which must not be neglected if we are to understand this sudden burst of administrative energy and skill. For years, men had been acquiring in obscurity, as had Bancroft himself, administrative knowledge of value, and the years 1604 and 1605 were only the fruitage of the previous decades. Yet it had needed the man with the eye to see, the head to plan, and the hand to execute, to bring forth these men from isolation and to put them into connection with the work which they were fitted to accomplish.

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[1] When he was Chancellor of Oxford University, he reappointed his Vice Chancellor because he said he had observed at Cambridge that the constant rotation of officers gave them a Vice Chancellor who was never efficient because, as soon as he had familiarised himself with the duties of his post, he was replaced by some one else. S. P. Dom. Jac. I, 47. No. 19. July 8, 1609. Bancroft to the Vice Chancellor, and Doctors, Proctors, and Masters of the Convocation House, Oxford.

[2] Chamberlain to Winwood, February 26, 1604-5. Winwood's *Memorials*, II, 49.

Bancroft's success with the able is by no means as remarkable as his capacity for dragging work out of the unfit whom he found in office and whom he could not displace, for most of this great record of the years 1604 and 1605 was made by the very men who had been so careless and negligent in the preceding years. Many men who preached in 1606 had not preached regularly before; many succeeded in procuring licenses who had not previously been qualified; churches were repaired; books and ornaments were procured for the service by the very men who had neglected for so many years to provide them.

[1] Certain ambassadorial statements to the contrary notwithstanding. Whitgift had exercised considerable influence in this particular also.

BOOK THIRD

VINDICATION OF RECONSTRUCTION

CHAPTER I

LEGAL OBSTACLES TO THE AUGMENTATION OF ECCLESIASTICAL INCOMES

The obstinate and refractory clergy had been deprived and the rest reduced to better order and conformity: the Visitation of 1605 and the general endeavors of the Archbishop, coupled to his efforts while Bishop of London, had infused into the Church an institutional vigour and a consciousness of corporate strength which were invaluable in the struggles of the coming years. Nevertheless, the much-needed reform of the Church, which Bancroft had long had in mind, was far from consummated because nothing effectual had as yet been accomplished towards the augumentation of ecclesiastical incomes, upon which, as has already been shown, depended the efficiency, character, and learning of the clergy. His attempts in the year 1604, the one in the secret conferences between the bishops and the Privy Council and the other in Parliament, had both failed to produce fruit and it was unlikely that similar proposals to succeeding Parliaments would be better received. The Archbishop was forced to look elsewhere. Much was accomplished by the union of small benefices which adjoined each other, as many did in the towns and cities and not infrequently in the country; and more yet by the exchange of benefices held in plurality by clergymen residing in different dioceses, so that each might secure two or more so near together that he could serve both on the same or alternate Sundays. The extent to which this practice was carried on is evinced by the large number of resignations and cessions of benefices recorded among the lists of institutions in the various diocesan registries. Often it is possible to trace the benefices which were thus exchanged in the same diocese. From a fifth to a fourth of all the institutions in England, during Bancroft's time, were probably made for this purpose. To have reduced the scandal and abuse consequent upon pluralities was, in truth, an achievement of no small magnitude, but it did not alleviate the real suffering and could not permanently cure the difficulty at all, for it did not in the least remedy the inadequacy of ecclesiastical incomes. It merely exchanged one benefice for another and did not even decrease the number of pluralists.[1]

Yet there could be no question that clerical incomes must be increased if any efficiency of administration was to be maintained in the Church. Only two possible solutions existed;[2] the one, to add to the present income by the resumption of a part of the impropriations and other ecclesiastical property secularised at the Reformation: the other, to restore the old incomes by the payment once more of the full value of the tithes of all property, either by a renewal of the old payment in kind or by a new commutation on the basis of the new prices. In the face of parliamentary opposition, any general change in commutation was not to be hoped for and the most feasible method of reinstating tithing in kind was through the decisions of the ecclesiastical courts. When some individual brought a *modus decimandi* to his attention in an actual suit at law, the ecclesiastical judge should declare it void, unless it was established beyond reasonable doubt, and reinstate tithing in kind. There were certainly many fraudulent claims in 1600. In many parishes, where there had been no custom, the villagers were now seeking by every possible means, even by perjury, to establish one. In other districts, they sought to overlook recent agreements, made to relieve to some extent the distress caused by the economic changes,

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		Canterbury	Norwich	Peterborough	Lincoln
1603	Inductions	—	39	—	39
	Resignations	—	8	—	12
1604	Inductions	—	33	31	55
	Resignations	—	11	4	27
1605	Inductions	23	41	12	70
	Resignations	11	17	5	20
1606	Inductions	20	40	—	43
	Resignations	7	17	—	15

[2] Some incomes were increased by voluntary contributions from the parishioners or from the patron (the Puritan cases are well authenticated instances) but what was needed was not a temporary or voluntary increase which might, any day, be rescinded or decreased, but a legal and permanent augmentation.

in order to return to an earlier *modus* more advantageous for them than the present one. Where the parishioners could not change the *modus,* they tried to interpret it in their favour and a general agreement seems to have been tacitly and unconsciously formulated all over England, that the small tithes of honey, wax, a few eggs, the loppings of trees, the gleanings from the hay-field after the workers had finished, were no longer to be paid.[1] These, however, were now valuable to the clergyman out of all proportion to their real worth because they were paid in kind and, estimated at the new prices, amounted to a considerable share of his nominal income. The large number of suits for such small tithes makes it clear that the clergy was meeting a good deal of opposition and that the laity did not intend to pay a penny more than was necessary. These fraudulent and unsupported claims were to be swept aside by legal decisions. Nor was real injustice committed by such a restoration of tithes, however the matter was regarded, for it merely put into effect the intention of the parties to the original pact: they had agreed on a price which roughly represented a tenth of the value and the layman had intended that the clergyman should have that proportion. Now, however, by the change in circumstances, the original agreement was actually nullified and the injustice lay not in changing the commutation but in maintaining it.

This plan, however, was neither new nor original and meant no more than the annulling of such *modi decimandi* as would not bear legal scrutiny. The action of the courts was the same which long had been customary in the adjudication of disputes between individuals, for every *modus* was to be questioned by the rector of the parish. The difference between the situation in 1605 and that of the previous decades lay in the thorough-going attempt to secure a legal adjudication upon every commutation which was in any way doubtful. And, while the initiative nominally proceeded from the individual rector, and, while we have no knowledge of any general directions or orders issued by the Archbishop to the clergy to try the validity of their *modus decimandi* at law,[1] something must have been said to the clergy at Visitations and a tacit understanding certainly prevailed among the ecclesiastical judges, that only the most unimpeachable proof of the existence of a *modus decimandi* was to be recognised and that, wherever it was not forthcoming, tithing in kind was to be restored.

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[1] There were numbers of suits for these small tithes. They must have been quite valuable or no one would have gone to the expense of litigation to secure them or to defend them. In fact, some of these cases, which nominally concerned only tithe pigeons or the loppings of trees, went through several courts.

For cases involving barren land see in the Law Reports, *Dyer*, 170: *Moore*, 909: *Croke*, I, 475. For cases on loppings of trees see *Moore*, 762, 908: *Plowden*, (1816 Edition) 468 a: *Croke*, I, 477. Involving broom, fennel, after-math, etc. see *Moore*, 910, 683. And as to tame turkeys, pheasants, partridges and their eggs, see *Moore*, 599. Trees under 20 years growth, see *Moore*, 541, 908: *Croke*, I, 477. Dry cattle giving no milk, see *Croke*, I, 476, 786. Tithes are not due for fuel burned in the house, *Croke*, I, 609; nor for the overplus of wood cut for making hedges, *Croke*, I, 499.

The crisis was, no doubt, hastened by the new corporate feeling, which Bancroft had infused into the clergy, and that thorough loyalty, one to another and to the Church, had no small influence in determining the attitude of the Church in these conflicts with the law courts. Bancroft had made men realise, as never before since the Reformation, the importance of the Church as an institution and had roused them to a consciousness that this very institutional life was in such grave danger that the support of every member of the ecclesiastical hierarchy was of vital importance. This feeling was new.

During the reign of Elizabeth the pillaging of ecclesiastical incomes had gone on apace among the lesser gentry; nonconformity had been rife; the law courts had been busy robbing the Courts Christian of their jurisdiction; and no one had seemed to care. Every bishop and clergyman seemed to be concerned, not with the future of the Church or with its fate as an institution, but solely with his own affairs, content if he could maintain his position, despite the Canonical regulations, and if he could win his own little case at law. The consciousness of a united Church behind him and of the militant spirit roused among the ecclesiastical lawyers, no doubt had much to do with Bancroft's decision to deliver so firm an attack upon the stronghold of the common law.

For this resumption of tithing in kind, Bancroft found express authority in the old Canon Law, for he read in Lindwood, 199, that no custom could be held good which was less than the just tenth which it commuted. It was also well established at ecclesiastical law, that "if the Minister or Curate may not be maintained by the residue of the Tythes, he may sue for the whole Tythe. And if there be a composition betwixt the Curate and his parishioner, that hee shall pay no Tithe, this composition is mearly void.''[1] Verbal agreements might be made at any time by any vicar with his parishioners but, by canon law, such an agreement would not bind his successor. Here was law enough to have condemned nearly every *modus decimandi* in England in 1604, though the Archbishop was far too politic to appeal to such enactments at so late a date. But he was convinced that, in some legal fashion, the amelioration of ecclesiastical incomes must be carried out. The attempt to do this and to strengthen the administrative fabric of the Church brought the ecclesiastical courts into collision with the common law courts and so caused the flood of prohibitions over which the two jurisdictions quarreled so fiercely from 1604 to 1611.

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[1] There are some cases in his Register at Lambeth of settlements of tithe disputes secured by episcopal or archiepiscopal arbitration.

Naturally the whole question of tithes had long been a matter of legal decision in the ecclesiastical courts and all those decisions had now to be considered and reconsidered, for laymen and clergymen, as each were impelled by their interest, were determined to claim advantage of every point rightly theirs by law. Must the parishioner reap the vicar's tenth or can he leave it standing; if the parishioner must reap it, must he bind it into sheaves and also make it into piles? Can the vicar take the tithe of wheat or hay as it lies spread out on the ground or must he wait until it has been gathered into windrows? Can he choose which tenth he will have or must he take what the farmer gives him? Where saffron ripens only once in three years, is the vicar entitled to three-tenths or only one-tenth?[2] Thus, the whole subject of tithes went to the ecclesiastical courts for decision and there it became the bone of contention in the renewal of the old struggle of those courts with the courts of common law which bulked so large in the legal history of the Middle Ages. As in the past, the quarrel took place over the extent of the two jurisdictions and the common law courts again wielded their old weapon, the writ of *prohibition,* which they issued to any ecclesiastical court which was holding plea of a temporal or, indeed, of any question properly actionable at common law. The basis of their interference was their belief that the ecclesiastical court was exceeding its jurisdiction. The prohibition, having been served on the ecclesiastical suitor, was then returned by him and his counsel, to the common law court on the day appointed when the question of jurisdiction was argued by counsel, and if the common law judge was convinced, as he not infrequently was, that the information upon which he had acted, was false and that the suit belonged in the spiritual court, he then issued a writ of *consultation,* bidding the ecclesiastical judge proceed as if no prohibition had ever been sued out. The importance of the prohibition, in the upbuilding of the common law of the sixteenth and seventeenth centuries, is simply incalculable: its very name began to possess manifold connotations and a certain mystic value as a talisman protecting the liberty of the subject.

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[1] Fulbecke, *A Conference of Laws,* part II, 3 a.

[2] In addition to the Law Reports, the tracts of Fulbecke, Ridley, Carleton, and Selden's *History of Tithes,* give us a great mass of ill digested and, in many cases, contradictory evidence. Even Selden at times treats his material in a singularly uncritical manner.

The general situation was, however, very different in 1604 from what it had been. The history of prohibitions properly begins in the reign of Henry III, if not earlier, but while the large number of them issued shows that they were systematically used by the common law courts, little is definitely ascertainable about their use in regard to the matters most in controversy in 1604.[1] It is, however, reasonably clear that the ecclesiastical courts were striving to decide questions of land tenure and of lay property in general and that in this attempt they were defeated by the royal courts. After the Reformation, when the struggle was renewed with vigour, two clear precedents stood out from the confusion and mistiness of the past: the one, that the ecclesiastical courts might not take cognisance of land tenure or its incidents: the other, that they might not hold plea of suits concerning debts or lay chattels except in matrimonial and testamentary cases.[2] On every topic which might possibly be in doubt, the boundary line between the two jurisdictions was so nebulous and vague that it was truly difficult for any one to see where lay the right decision. If there was a right and a wrong about it, the two courts could not agree as to which was which. Both claimed, in the debate which we are about to describe, that in the past their contentions had been accepted by both courts as the truth. Yet, if any agreement had been made, it was imperative that it should be recognised and made clear, an end which could not be achieved without argument and recrimination. Furthermore, if both sides could have agreed as to what the terms of the former settlement were, the situation had so altered that many reasons would have urged a modification of its terms.

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[1] Pollock and Maitland, *History of English Law,* II, 199.

[2] Exactly what these phrases meant, what was a debt, what was a lay chattel or what was a matrimonial or testamentary case, was constant cause of mutual disagreement and recrimination even in the sixteenth century. The principle was admitted, but it was always possible to argue that any particular case did not fall within its provisions.

Chiefest of all, the ecclesiastical courts, which had been during the Middle Ages distinctly inferior to the legatine courts and those of the papal curia at Rome, were made, by the abolition of papal authority, the supreme ecclesiastical judicature in England.[1] The Court of Arches became the supreme court of appeal (except of course for the statutory Court of Delegates) the Prerogative Court could now give final decisions in matters testamentary and probate without fear of having its decrees overridden by appeals to Rome; the Court of Audience, the Court of Faculties (which issued dispensations) all became, in their departments, the supreme ecclesiastical authority in England. The bishops' consistory courts, even the archidiaconal courts and bishops' commissaries, gained greatly in power and dignity by the change, not because any of them received new grants of authority but because, the possibility of appeal to Rome having been removed, the same powers became relatively greater than ever before. As the statute provided, all of the old canon law, which was not repugnant to the statutes of the realm and to the common law, remained in force, but no declaration was made at any time of what was and what was not thus annulled.[2] Yet, if there was a definite right and wrong to the quarrel between the two jurisdictions, if the question had been decided in the Middle Ages or by the Reformation statutes, neither could induce the other to admit the fact. While therefore the problem of the right and of the wrong, of the legal and illegal, might interest lawyers and while they might be able to solve it, we, as historians of the Church, may safely treat the subject purely as a narrative of disputes and debates which had a momentous influence upon the history of the Church as an institution. We need not decide the right and the wrong of the controversy but we must investigate thoroughly the issues involved and see how it was that so prolonged a controversy could take place over questions which each side insisted were perfectly easy of solution.

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[1] The best thing in print on the ecclesiastical courts is Bishop Stubbs's appendix to the report of the Commission upon the Ecclesiastical Courts, *Parliamentary Documents,* 1883, XXIV. This, however, is very brief. Makower's excellent account in his *Constitutional History of the Church of England* is too brief to be of much assistance in this connection, for it contains merely the skeleton of the ecclesiastical fabric. So much the student of institutional history must know as a matter of course but we are here concerned not with the theory but with the actuality.

[2] Ideas were entertained of issuing an authoritative codification but it was never done. If any legal statement had been made by the common law courts or by any other authority, it was not produced (unless Coke's ''book cases'' and precedents answer that description) and the ecclesiastical lawyers refused to admit that any decision had ever been made. So much is fact: what the real truth was is an academic inquiry.

In the first place, the legal status of the tithes had been altered. Previous to the sixteenth century, few tithes were paid to laymen and those which did not go to the vicar himself were paid to some monastery or to some semi-ecclesiastical corporation, such as a trade-guild, so that tithes bore distinctly an ecclesiastical aspect as property which no layman could conscientiously hold.[1] There was, therefore, very little question that the ecclesiastical courts ought to decide all cases and disputes rising out of them and the right to receive them. Now, when the dissolution of the monasteries placed in lay hands much property, to which was annexed the right of receiving the tithes, the status of the whole subject was at once altered. The temporal courts soon decided that the right to receive the payments of the tenths (in technical phrase, the impropriations) passed with the land and could be bought and sold as any other lay chattel: in other words, that such tithes had completely lost their ecclesiastical character and had become a sort of rent charge upon the land, paid by a layman to a layman because of immemorial custom. There was, therefore, some ground for arguing that the impropriated tithe had become a temporal possession, a part of the layman's lay fief, a thing in which the clergy had no interest, over which the ecclesiastical courts could exercise no control and a matter with which the temporal courts alone might deal. Once this view became clear—and even the ecclesiastical courts admitted its justice—it was inevitable that an idea should appear that such cases should be impleaded before the common law tribunals, for the distinct terms of the previous victory had been that the ecclesiastical judges should not attempt to decide matters of land tenure, real property, and their incidents. Tithes were now, in some cases, not only temporal possessions but distinct adjuncts of real property. In such cases the clergyman, who served the cure, usually received no money as his stipend but a certain part of the tithes paid directly to him by the parishioners, and this part, it might be fairly claimed, still retained an ecclesiastical character. Yet the laymen who paid them declared that really the vicar received not tithes but an allowance from the impropriator, which having become purely temporal, ought to be tried in a common law court. A great many parishes were affected by this contention, which, of course, was doubly true where the clergyman was paid by the patron in money or where the parishioners paid the parson in money for the patron.

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[1] There had been impropriations as well as appropriations before 1530 but they had been distinctly irregular and without clear legal status. The Reformation created, in the law of tithes, few new distinctions: for the most part, it extended and legalised certain practices already in existence.

The statutes of Henry VIII and Edward VI, however, were explicit in their directions that laymen should sue for tithes at ecclesiastical law and they were passed precisely because the altered status of tithes was not recognised by either ecclesiastical or common law, so that, as things stood, the lay impropriator had no right to sue in any court for his tithes. He had no rights according to ecclesiastical law, which did not admit that a layman was capable of holding such property at all, while at common law, the courts had never had jurisdiction over tithes. Wherefore, said the preamble to the act of 32 Henry VIII c. 7, "divers of the King's subjects . . . cannot, by Order and Course of the Ecclesiastical laws of this Realm, sue in any Ecclesiastical Court for the wrongful withholding and detaining of the *said tithes and duties nor cannot, by the order of the Common Laws of this Realm, have any due Remedy.*" The act of Edward VI (2 & 3 Edward VI c. XIII, s. 13) was even more explicit, for, in the body of the act, it declared "that it shall not be lawfull unto the Parson, Vicar, Proprietor, Owner or other their Farmers or Deputies, contrary to this Act, to convent or sue such Witholder of Tithes, Obventions and other Duties aforesaid, *before any other Judge than Ecclesiastical.*" In the face of these explicit statements, it can hardly be maintained that both Henry VIII and Edward VI did not intend that all suits of any description for tithes (whether by the vicar or by the lay impropriator) should be tried in the ecclesiastical[1] and not in the common law courts. Intent and legal accomplishments are, however, two different things.

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[1] The ecclesiastical lawyers declared that such was the law. "Notwithstanding all which good provision of ancient Kings before the

The exact boundaries of the parishes began to figure largely in suits at law [1] for, of two adjoining parishes, one often possessed a *modus decimandi* more advantageous to the parishioner or vicar than the other and suits might be brought on the ground that the land in question really ought to pay tithes in another parish. So long as the parish was merely an ecclesiastical division, there could be no doubt but that the ecclesiastical judges ought to decide its bounds, but the Tudors had made the parish the unit of local government and had forced the vestrymen and wardens to oversee the building of roads and bridges and the care of the poor. The parish was fast becoming a secular unit under the fostering care of the Privy Council and of the justices of the peace and there was, therefore, a good deal of basis for the contention that the bounds of the parishes should be decided at common law. The decision of the point, however, often drew in its train momentous consequences for the income of some vicar.

The two sets of judges were by no means in accord as to what a valid *modus decimandi* was. The ecclesiastical judges insisted that something reasonably equivalent in value to the actual tenth commuted should be assured the clergyman and quoted canon law to the effect that, if the commutation so reduced that vicar's income that he could no longer live upon it, he had a right to reinstate by legal process the original tithes in kind. The common lawyers differed in opinion and declared that the legal *modus* was whatever had been substituted in the past by mutual consent for the actual tenth.[2] The fact that the relation of the parties had changed, that the value of the commutation had altered, was not, they insisted,

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Conquest and moderne Kings since the Conquest, for the assuring of the suit of Tythes to the Ecclesiasticall Courtes onely and the Continuall possession that the Ecclesiasticall Courtes have had of the same . . . those Statutes which then were intended for the good of the Ecclesiasticall Courtes are now become the utter ruine and overthrowe of the same. . . . Tythes, by the said Statutes, are onely recoverable by the Ecclesiasticall law, and not elsewhere: so also the custome whereby they are paid is only triable at the Ecclesiasticall law. . . . All should be ended in one and the selfesame court, which would be a great ease to the subject who now to his intollerable vexation and excessive charges is compelled to runne from Court to Court and to gather up, as it were, one lim of his cause here and another there, and yet happily in the end cannot make a whole and perfect body of it.'' Ridley, *View*, p. 138.

[1] For instance, *Croke*, I, 228, 659.

[2] Ridley, *View*, p. 180. A *modus decimandi* ''by the Common Law is counted to be good by paying a thing never so small in lieu thereof.''

of legal cognisance: the *law* was the *law* because it was law, because it existed; and reason, equity, logic and justice could not change the fact that it was law, when once it had been established that this was the old agreement. In other words, the ecclesiastical lawyer insisted that to be a good *modus* it must represent reasonably well the value of the tenth: the common lawyer declared that the value was not at issue and that the *modus* was good, if it could be proved that it was the agreement which had been made.

This was a serious disagreement and another of equal importance soon developed over the question how a *modus decimandi* should be proved. The statute of Edward VI provided that the custom in use for the previous forty years should be treated as the correct one and the ecclesiastical judges, assuming that payment in kind was the regular legal method of tithing and that commutation was an exception to the rule, were inclined to throw the burden of proof upon the parishioner and decree that, unless he could prove his allegations, tithing in kind must be resumed. On the other hand, the common law judge, conscious that in nearly every parish in the land some *modus* had been set up previous to 1549, was inclined to call upon the parson to demonstrate that the *modus* claimed by the villagers was not the actual practice and to show what the true custom was. Either party would very likely be hard pressed to prove his contention, for written documents were rare and easily lost and such agreements were, as often as not, made orally with parishioners too illiterate to read or write. Still the vicar was here more likely to suffer, for, inasmuch as tithing in kind was the normal state of things, no record would have been kept, while a definite statement in writing of the establishment of a breach of the rule would probably have been more often made. The contending parties were usually forced to show by witnesses what the custom had been. Here the ecclesiastical judge demanded two who agreed perfectly, while the common law judge was amply satisfied with one.[1] Where the civilian, clinging to the letter of the statute, asked for definite testimony of what the custom had been forty years previous, the common lawyer was satisfied when no witness was produced who could remember anything to the contrary of what was affirmed[2] and he accordingly might affirm a custom either older or younger than the one contemplated by the statute.

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[1] *Croke,* I, 667: *Croke,* II, 269. *Coke,* XII, 65.

[2] "Where the memory of man runneth not to the contrary" was a time-worn maxim of the courts. We find here one of the differences between the ecclesiastical law which was in the habit of requiring written evi-

Another point on which the two systems of law tended to differ, was as to the moment when the grain ceased to be tithes and became the ordinary property of the parson, making its theft or detention or loss as much a subject for the common law as if the grain had continued to be the property of a layman. The common lawyers asserted that as soon as the grain or titheable property had been set aside for the minister to carry away, it ceased to be a *res spiritualia,* while the ecclesiastical lawyers insisted that it retained its ecclesiastical character until the vicar had actually removed it to some other place. This seems a small point but its decision meant the adjudication of the vexed question where should tithe cases be impleaded in which fraud, covin, detention, or illegal carrying away had taken place. The failure to separate the tithe was admitted by both parties to be of spiritual cognisance only: it was equally agreed that the action for theft, or fraud, after the parson had secured possession, lay at common law.[1] The status of the grain in the intermediate ground was the important point for, inasmuch as the majority of cases were for the withholding or detention of tithes properly severed, it would decide into which court all cases should go.

Both systems of law were liable to abuse and perversion and probably both worked much mischief and no inconsiderable injustice during the latter half of the sixteenth century. Indeed, the skein was so tangled that no method of unravelling it could have been found where some knots would not have had to be cut, where some men would not have received lasting wrong and injury. There was no one clear and equitable method and it is futile for us

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dence, (possible of course among clerks) and the common law where written evidence was in theory an anomaly, to be used only when a witness was not forthcoming.

[1] Such a case came up in Leigh v. Wood, *Croke*, I, 607, also reported in *Moore*, 912. In Fulbecke's *Conference of Laws*, (part II, 7 a) the common lawyer says, "if the Parson take Oates or other graine as his Tythe, and an other taketh them awaie from him, the nature is altered, and now they become a lay chattel and the Parson shall haue an action of Trespas at the Common Law." The pages in which he discusses the differences between the view of tithes taken by the ecclesiastical and common law courts are illuminating, for, though written by a common lawyer in 1600, they show no trace of that uncompromising hostility to the ecclesiastical law which within a few years Coke was to declare had been the attitude of the common law courts time out of mind.

to-day to blame either one or the other for cruelty or injustice.

For all these reasons, a given set of facts could be read in several ways and almost any case could be drawn into either court upon some specious plea. The villager, for instance, separates his tithes properly enough but leaves them in his barnyard with the gate locked, so that the parson cannot get in and the grain spoils.[1] If it can be proved in court that the gate was locked, he has been guilty of fraud: if it was not, the parson has lost his grain through his own fault in not coming sooner to get it. The crux of the matter, then, argue the common lawyers, is whether or not that gate was locked and that surely is a temporal matter to be determined at common law. The ecclesiastical lawyer pleads *per contra* that it is a case of tithes, which properly belongs in the ecclesiastical court, where the incidental question, whether or not the gate was locked, ought also be settled. If two parsons join in a dispute as to which of them ought to receive the tithes of a particular piece of land, the ecclesiastical lawyer decides readily that here is a matter for the ecclesiastical court, for two clerics are engaged in a dispute. Quite the contrary, objects the barrister, for they were disputing whether a certain piece of land lies within a certain parish or not and the question of the boundaries of parishes is purely temporal.

Nothing can demonstrate so well as an actual case how complicated these suits often were and how many lines of decision might be taken. Kyfeley, the impropriator or lay owner of the tithes of the parsonage of Sapsto, sued Curtis, a farmer, for default of tithes.[2] Dullingham, the rector of a neighbouring village, who was thus a third party, as the legal phrase runs, brought a prohibition from the Court of Common Pleas against Kyfeley's suit in the ecclesiastical court, on the ground that the very tithes in dispute had been commuted into thirteen cheeses per annum, which were due to him. He further alleged that he had offered this plea in the spiritual court where it had been refused as inconclusive. Accordingly, now, as we follow one or the other thread, we shall be forced to accord the common or the ecclesiastical law the trial of the case. The original suit was between two laymen about certain tithes which had lost, beyond all dispute, their ecclesiastical character and, on this ground, we might well believe that the case ought to be heard at common law. On the other hand, they voluntarily began their suit before an ecclesiastical tribunal and were apparently willing to await its decision and abide by it, when suddenly a third party claimed a right to drag them to common law. Here equity and justice would seem to demand that the trial continue in the Courts Christian and all the more so as they were disputing solely the right of tithes, of which only the ecclesiastical courts had cognisance. Nevertheless, Dullingham had set up a plea of a *modus* which the ecclesiastical court had refused and this was a "suggestion" on which the temporal courts, again and again, declared that a prohibition ought regularly to be upheld. Further, the issue might be joined over the question as to which parish church ought to have the tithes, and as this involved the question of boundaries, it could be tried at common law, or it might have been urged in reply, that as the *modus* on which Dullingham declared, had been his agreement with the parson of Sapsto, the issue between the two parsons ought to be decided by canon law. Surely, neither court ought to have lacked an opportunity to draw such a suit before it.

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[1] This was Blackwell's Case. *Croke*, I, 844. Sir Edward Coke himself was counsel in this case and lost it on the very contention he later supported against Bancroft.

[1] *Croke*, I, 251. Another excellent case on this point is Benton v. Trot. *Moore*, 528.

This conflict, however, was no war of the laity against the clergy, though a layman might be expected to be more easily dissatisfied with the ruling of the ecclesiastical court than the cleric. Any one who will take the trouble and time to search the law reports will find that prohibitions were as often secured by the vicar as by his parishioner.[1] In the case just cited, Dullingham v. Kyfeley, the ecclesiastic secured a prohibition from the temporal court against two laymen voluntarily suing in the Court Christian. In Smith v. Clarke,[2] a claimant to a benefice sued the actual incumbent for not reading the Thirty-Nine Articles and assenting to them as by law required, whereupon the vicar, thus sued for a purely ecclesiastical offence by a brother clergyman, secured a prohibition from the common law to bar the suit, although he could claim only by a fiction that the ecclesiastical court was considering a temporal matter. In Quarles v. Fayrchild,[3] one layman sued another in Court

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[1] Coke later on made good use of this point, declaring that the ecclesiastical position could not be thoroughly legal, inasmuch as the clergy themselves sued at common law, sought prohibitions and justified themselves by the very reasons he himself gave the Archbishop.

[2] *Croke*, I, 252.

[3] *Croke*, I, 653. Also, Pratt v. Stocke, *Croke*. I, 315 and Dr. Hunt's Case, *Croke*, I, 262.

Christian about the ownership of an advowson and, after the case had been heard, tried, and sentenced according to ecclesiastical law, the defeated party secured a prohibition from the common law courts to prevent the execution of the sentence. It might be supposed, from a general view of the subject, that those who asked for prohibitions were moved by doubts concerning the validity of the ecclesiastical jurisdiction but, in view of the evidence afforded us by the law reports, the hypothesis must be declared untenable. The only rule which results from a careful study of the prohibitions preserved to us, is that the party, who lost his suit in the ecclesiastical courts, sought a prohibition as a means of trying still further the issue between himself and his adversary, in the hope that the other judge would see the whole problem in a little different light and reverse the decision. The whole process is precisely similar to an appeal, at the present day, to the High Court of Appeals or the House of Lords and was not made with the intention of reflecting on the legality or procedure of the court from which the "appeal" was taken, but with the purpose of winning the suit if it were possible.[1] In fact, the use of the prohibition was a sort of convenient fiction, by which a sort of "appeal," which the law did not permit, was made possible. A case came up before the court of Common Pleas, in 34 Elizabeth, on prohibition, where the defendant stated that the plaintiff had already been defeated in the spiritual court, that he had then procured an inhibition from the Chancery, which court had, on a hearing, upheld the spiritual decision, and that he now brought this prohibition in the Common Pleas to stay the execution of the sentence. The judges unanimously granted him a consultation, "for otherwise, he shall be infinitely vexed, that, when one court grants a consultation, he shall sue a prohibition in another court."[2]

A man named Fuller sued one Clemens about the ownership of a rectory in Norfolk and was defeated in the bishop's Consistory Court, because he had only one witness where the ecclesiastical law required two. He then appealed to the Court of Arches, and there was again defeated upon the same ground. Having thus voluntarily submitted his case twice to the arbitrament of the ecclesiastical courts, he sued forth a prohibition at common law, alleging, "that, the case being only who had the best estate in the said rectory by Common Law this ought to be tried by Common Law and not in the ecclesiastical court: for this is the birthright of the subject, to have his inheritance and freehold tried and determined by common law, for the civil law differs much in the deciding of inheritances . . .[1] That as all matters in law ought to be determined by the Judges of the law . . . this question is not fit to be determined by the ecclesiastical Judges, but by the Judges of the Common Law." The judges apparently did not consider that his birthright had been danger, for they upheld the decision of the ecclesiastical courts.[2] The motives which impelled litigation were in the sixteenth century precisely the same as they are to-day—the desire to recover property, to be paid damages for injuries, and the pursuit of that object wherever success seemed most easily achieved, irrespective of the niceties of legal procedure and of jurisdictional controversies which the suitors very likely did not comprehend.

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[1] There was little difference in the penalty awarded by the two systems of courts, for those matters were regulated by statute: otherwise, the weakness of the sole ecclesiastical penalty — excommunication — would soon have sent all such cases to the common law where a much superior remedy by fine or distraint was procurable.

[2] *Croke*, I, 277.

The uncertainty and the disagreement between the courts as to what the law of tithes really was; the numerous legal theories, any of which might be selected as the basis for a decision; the actual injustice perpetrated by the law as it existed and by almost any decision rendered by either system of courts; the unwillingness of the defeated party to abide by the first decision; all tended to produce a vast amount of litigation and to foment the quarrel already begun between the two jurisdictions. Each had specious pleas of law, justice, and equity in favour of its contentions; each believed that the safety of the Church or State depended upon the continuance of its efforts; each had secured the support of powerful interests in the nation. The one had behind it the clergy who wished to increase their incomes; the other possessed the adherence of the laity who were eager to keep for themselves the money which accrued from these tithes. Each was so clearly right in some of its contentions that it could not conceive of the existence of any weak points in its case. In fact what made the breach serious was the existence of right on both sides.

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[1] *Croke*, I, 571, 736. The Bishop of Coventry and Lichfield in the course of litigation on one case in 1583 against several laymen was three times before the Privy Council, twice before the High Commission, twice before the Archbishop of Canterbury, besides attendance in the Chancery, the Star Chamber, King's Bench, Common Pleas, and the assizes, and quarter sessions in the county itself. Record Office, Exchequer Documents, Q. R. Ecclesiastical. Bundle 9, No. 6. Original, signed.

[2] Coke, *Reports*. XII, 65-67. See also Halliwel v. Jervoise, *Moore*. 462.

Since the Reformation, the common law courts had from time to time issued prohibitions at the request of suitors in cases of tithes, as well as in other classes of ecclesiastical litigation. The judges had at one time followed one of the possible lines of argument and at others, such different lines that the decisions recorded in the law reports presented anything but one uniform stream of precedent in 1600. The printed law books accessible to the judges and lawyers of the sixteenth century, such as the *Year Books,* Fitzherbert's *Natura Brevium,* and Brook's *Abridgement,* contained precedents upon prohibitions as early as Henry VI and Edward IV which bore more or less directly upon the issues presented to them in the last decade of the sixteenth century, showing that in individual cases the issue was by no means new. But among these old precedents, of which the diligence of a dozen searchers found comparatively few,[1] there was very little agreement. Brook gave a statement from 38 Henry VI that "according to the common law, the spiritual court had no power to hold plea in any sort of the right of tithes between lay patrons."[2] This decided, however, nothing further, if indeed it was more than a dictum or a statement of counsel, than that even so purely ecclesiastical a matter as the right to receive tithes became temporal when in question between two laymen. Nevertheless, on this very point, the statute of Henry VIII, (which was presumably drawn up with legal counsel) stated that laymen "cannot by the order of the Common Laws of this Realm have any due remedy." *The Doctor and Student,*[1] a book written about the middle of Henry VIII's reign and considered authoritative by lawyers under Elizabeth and James I, said that even if the ecclesiastical judges "would not allow the said prescription (for tithes) yet I thinke no prohibicon should lye, for though the Judges in a spirituall matter [2] deny the parties of iustice yet the kinges lawes cannot reforme that but must remit it to their conscience. But if there were some remedie prouided in that case it were well done, for some saye that in the spirituall Court they wil admit no plee against tithes." In 1553, a prohibition was asked for on the ground that the ecclesiastical judge had refused as conclusive such a statement as that the tithes had been commuted into one payment of twelve pence and the writ was granted, for the general opinion of all the judges on the King's Bench was, that no proof was needed: upon such a statement, they would *a priori* issue the writ, because the Courts Christian would not admit such pleas.[3]

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[1] The long rows of citations produced on all occasions by Coke and the Crown lawyers cannot be accepted without scrutiny, for many of them prove on investigation to be cases which we would not to-day consider in point at all and the vast majority were only dicta. In truth, there were records of prohibitions in plenty, but not a great many in point. This Bancroft was clever enough to see. Coke denied it and asserted that all his cases were in point and that, at any rate, no one but the judges of the common law had any right to decide whether they were in point or not. Some undoubtedly did support his contentions, that tithes were sometimes subject to common law jurisdiction as lay chattels before the legislation of Henry VIII. Brook, *Abridgement,* (1573), II, f. 164 b. no. 3, case of 44 Edward III: certain cases of tithing of woodland were claimed to be of common law cognizance, id. f. 164 b. no. 1. case of 9 Henry VI; that "quar ou le common ley poet meller, le spirituall court ne mellera," case of 22 Ed. IV, *ibid.* p. 165 b. No. 14; and No. 19, a case of 10 Henry VI. On the other hand. a case of tithes between two parsons was declared in 2 Henry VII to be of spiritual cognizance, *ibid,* f. 165 b, No. 16. Here are certainly the outlines of the later common law position, gathered out of as easily accessible and well known a source as Brook. It was not true, as the clerics insisted, that there were no precedents at common law but neither was it true that all of Coke's statements found clear precedent in the old law.

[2] Brook, *Abridgement.* II, 165, no. 7. (Ed. 1573). "Al common ley le spirituall court nauer power de tener plee de nul parte de droit de dismes inter patrons."

The course of the decisions made during Elizabeth's reign was no more unified and clear than that of the earlier cases. The King's Bench and Common Pleas took opposite views of the selfsame facts and the same court, at different times, made rulings which clearly contradicted each other. In the case of Mallary v. Mariot, in the Court of Common Pleas,[4] a prohibition had been asked for on the ground that the ecclesiastical courts refused to accept the testimony of one witness, as was sufficient at common law, but required him to produce two. The court granted the prohibition, declaring that "it would be a greater inconvenience to bring two witnesses to prove payment to every sort of tithes." The King's Bench, on the other hand, declared, on the same facts, in Futter v. Whiskin,[5]—a decision which Chief Justice Coke later quoted as authoritative—that "such a surmise, that he hath but one witness is not sufficient to have a prohibition where the ecclesiastical Court hath jurisdiction of the principal.'' The case was a clear-cut issue of the fraudulent detention of tithes, a matter which the ecclesiastical court might otherwise have decided, yet the same court, in a case of legacy, which also was admittedly ecclesiastical in character, said, that ''if he had surmised, that he had pleaded this release in that court and produced his witness and that they would not allow it because it had not two witnesses, this had been a good surmise.''[1] Other examples might be added[2] but these will perhaps suffice to show that the decisions were contradictory in some cases and that the same confusion prevailed among the cases that were decided on minor points as did among those adjudicated on the real debatable ground of tithes and their incidents.

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[1] Edition of 1569, p. 177 a.

[2] The inference plainly is that the *modus decimandi* is a spiritual matter.

[3] Dyer's *Reports,* French Edition, 1688, f. 79.

[4] *Croke,* I, 667.

[5] *Croke,* II, 269 and 270. Coke, XII, *Reports,* 66.

The cause of this difference of judicial opinion lay, of course, primarily in the difficulty of the subject itself and the frequent shifting of equity from one side to the other. An examination of most of the reports leaves in the mind of the student, a belief that the common law judges were attempting, until 1600 at least, to render a decision which should be as equitable as possible, not only to the suitors in the case but to the ecclesiastical courts. At one moment, the parson was clearly in the right and needed assistance from the common law; at another time, the tables were reversed and he deserved his defeat at ecclesiastical law. Even on that vexed point as to the refusal of a plea of a *modus decimandi* by the spiritual court, the common law judges gave reasons for their action which clearly evince an attempt at justice to all parties. A parishioner was sued by his vicar for tithes of hay and when his plea that they had been commuted was refused in the Court Christian, he secured a prohibition from the common law. ''Here it is only a modus decimandi . . . '' said the judges, ''yet it is good, for otherwise there will be a great mischief, for the Spiritual Court will not allow a plea of modus decimandi but only of payment of tithes in kind.

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[1] Bagnall v. Stokes, *Croke*, I, 88. It is hard to make out whether there is a distinction here between his plea that he had only one witness which would be refused hearing in the ecclesiastical court, and a plea that he had actually offered his witness and had been refused: that is to say, between the probability and the actuality.

[2] Cullier v. Cullier, *Croke*. I, 201, with Dr. Hunt's Case, id. 262: Blinco v. Barksdale, id. 578 with Crouch v. Fryer, id. 784; Savel v. Wood, id. 71, with Scory v. Baber, id. 276; Riesby v. Wentworth id. 642 with Smith v. Shelbourne, id. 685; Norwood's Case, id. 684, with Fox's Case, id. 709; *Dyer*, 151 b, 4 & 5 Ph. & Mary, with *Dyer* 264 b, 9. Eliz.

. . . Therefore the Common Law shall aid him."[1] On the other hand, the same judges showed themselves equally ready to protect the parson from fraud. A layman, who set out his tithes and then carried off a part, had been defeated by his vicar in the ecclesiastical court and then asked for a prohibition to stop the proceedings against him, but his request was refused: "otherwise mischief would ensue to the parson in that he would secretly set his tithes forth so as the parson should not know thereof and would afterwards carry them away."[2] Then appeared a case between two clergymen, the rector and the vicar, the former of whom had always been paid the great tithes while the latter had received the small. A certain field, usually sowed with corn, had ranked with the great tithes and had therefore rendered tribute to the rector, but one year it was sowed with saffron, which was accounted a small tithe. The rector declared that, inasmuch as he had always had the tenth from that field, he ought still to receive it and the vicar insisted, in his turn, that according to the agreement all small tithes were his. Thereupon the rector sought a prohibition at common law, to rob the vicar of the decision which it became clear he would get in the ecclesiastical court, but the judges refused him a prohibition on the ground that the tithes ought to be paid to the vicar.[3] Yet another case was remanded to the ecclesiastical court on the ground that if a prohibition were granted, "then he should never have any remedy for them (the tithes) for, if he may not sue for them in the Spiritual Court, he can not sue for them here." (i. e. common law.[4])

There were not wanting, however, signs to show that, if ever the common law judges became hostile to the ecclesiastical pretensions, there would be ample precedents from which they might argue. Naturally, the two contradictory lines of decisions, which have been already described, might serve as precedent for any course the judges might choose to adopt and give them an assured backing of old law. There sounded also in many decisions the note of change. One of the fundamental points of ecclesiastical procedure was the use of the oath *ex officio* and, although we do not find the judges declaring it illegal, one of them said that the ecclesiastical courts might use the oath only in causes testamentary and matrimonial, "where noe Discredit can be to the party by his oath."[1] Another dispute arose over a matter of tithes which it was claimed had been commuted for the use of twenty acres of pasture and of twenty acres of woodland. The defendant proved his commutation in regard to the pasture but could not demonstrate the point about the woodland and had therefore been defeated in the spiritual court. He secured a prohibition, however, for "all the Court held it to be well enough; for it is sufficient that he had it, and the other cannot shew how . . . The Proof also in a prohibition ought not to be so precise: but, if it appears that the Court Christian ought not to hold plea thereof, it sufficeth. . . So here the substance is proved, that he held the land in satisfaction."[2] In other words they accepted proof that some agreement had been made and did not insist that he prove that agreement which he had averred in his declaration. This was quite contrary to the practice of the time, when the slightest technical imperfection in any pleading was usually sufficient to defeat the whole suit. They did not apply to the prohibitions the strict rules which they insisted upon in all other common law proceedings.

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[1] *Croke*, I, 317. See also, Folcott v. Ridge, *Croke*, I, 333. Ingolsby v. Johnson, id. 786; Crimes v. Smith and Bedle v. Beard, both in XII *Reports*, 4, 5.

[2] *Croke*, I, 607, Leigh v. Wood, also Lyss v. Watts, id. 277. A number of cases in which consultations were issued are in Lansdowne MSS. 161, f. 229.

[3] Bedingfield v. Feak, *Croke*, I, 467; also *Moore*, 909.

[4] Vaughan v. Beale, *Croke*, I, 394. This was urged by one of the barristers and was sustained by the court.

Until 1605, however, the dispute had, with a single exception, been confined to individual cases and to the decisions of individual judges. There had been no concerted action on either side. It remained for Bancroft, in the fall of 1605, to make the question a conflict between the Church as an institution, and the judges of the common law as a bench.

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[1] Cullier v. Cullier, *Croke*, I, 201. See also id. 675.

[2] Austen v. Piggott, *Croke*, I, 736. Also Green v. Penilden, id. 228; Margaret Palmes v. the Bishop of Peterborough, id. 241; Pett v. Baseden, id. 274; Kelley v. Walker, id. 665 and in *Moore*, 915; Wright's Case, *Moore*, 425; Anonymous, *Moore*, 573.

CHAPTER II

THE ARTICULI CLERI, 1605

Fifteen years of quarrelling, arguing, and writing had produced, in 1605, an issue as to the manner in which the writs of prohibitions should be granted—but an issue complicated and confused by all the refinements and technicalities of which the lawyers on either side were capable. The real differences were, for the time being, submerged and probably not clearly seen even by the principal combatants. To both sides, the significant issue, in 1605, was the technicalities of legal procedure in the granting of prohibitions. The ecclesiastical lawyers had, indeed, found the vulnerable spot in the common lawyers' armour, for, if they could restrict the practice of prohibitions, the weapon of the common law judges would be broken, and their claims, thus deprived of the means of enforcement, would be of little consequence.

The Articuli Cleri of 1605 mark the outbreak of a flame which had long been smoldering beneath the apparent conscientiousness of the judges on both sides. During Elizabeth's reign, the disputes had been entirely tentative, not to say confused and aimless. So far as men had attempted to substitute tithes in kind for a commutation, or vice versa, their essays had been disconnected, and the product rather of the energy of some individual rector or layman, than of any concerted movement among either the clergy or laity. So far as the ecclesiastical judges had supported these attempts by requiring more stringent proof of the existence of the *modus decimandi,* so far as the common law judges had opposed them, they had acted, on the whole, according to their individual ideas of law and expediency. Some amelioration of ecclesiastical incomes had been effected, but not much; some suffering had resulted for some laymen, but not for many; and, in almost every case, the defeated party had acquiesced in the result. While the discussions of the lawyers had, at times, wandered from the technicalities of procedure to the more general aspects of the problem, they had reached no clearer agreement as to what the latter was than as to where the remedy was to be found. In fact, such concerted action as there seemed to be was due rather to the universality of conditions affecting clergy and laity alike, and stimulating each to follow their interests, than to any definite plan of action on the part of either. It is possible, but improbable, that the ecclesiastical judges had reached before 1604 some tacit understanding; it is unlikely that the common lawyers had any adequate idea of the importance of the crisis before Coke assumed the leadership. Such universality and generality as the controversy displayed in 1605 were due not so much to a common plan as to a common motive.

As early as 1590, the disputes between individuals[1] became keen and prohibitions numerous.[2] Moreover, the dispute which had begun over the difficulties of law and administration, brought into prominence by the Reformation in cases of tithes, was rapidly spreading to include every subject over which these was room for a difference of legal opinion. These were legion. The most fundamental issues in the relationship of the common law to the ecclesiastical law had been left unsettled by the Reformation statutes; the line between the two jurisdictions, always a difficult matter to determine, had been made doubly hard to define since the ecclesiastical courts had been released from their servitage to the papal curia; the precise point at which the temporal courts would be justified in interfering to preserve their rights of jurisdiction, the details of the procedure which they could use, had all been left to circumstances, by the failure of the various attempts made under Henry VIII and his children so to solve them to the satisfaction of all parties, that a definite settlement could be established. In seeking to view the wide ramifications of the subject, it must not be forgotten that, in the sixteenth century, the ecclesiastical jurisdiction included such matters as matrimony, divorce and legitimacy; legacies, administrations, probate, and other testamentary questions; slander, libel, perjury, and much more which is to-day of purely civil cognisance.[1] In every one of these classes of suits, the common law judges claimed the right to issue prohibitions. Tithes were soon lost from sight in the forest of technicalities which became the chief battle ground of the rival judges for fifteen years.

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[1] The Law Reports, which manifestly contain only a small and perhaps not representative selection from the prohibitions, would lead us to suppose that they began to be numerous about 1592 or a little later. The Articuli Cleri refer several times to the dispute as one of recent origin. The Civilians' letter to Bancroft (January 22, 1609, Cotton MSS. Cleopatra, F, i, f. 107,) states that prohibitions had been numerous only during "these last twentie years." Bacon stated in his speech on the treble value, July 8, 1609, that no suit for treble value had ever been brought in a temporal court by confession of the judges themselves until 1586.

[2] Except through the prohibitions recorded in the Law Reports we have no printed records of the ecclesiastical decisions, and the manuscript records are as yet in such absolute confusion that no conclusive results can be hoped for at present. The statements of both judges and advocates during later years confirm what we find in the Reports. It should be borne in mind very carefully that the Reports only give the decisions which were questioned and which might therefore be expected to be mostly dubious and irregular. Really, in studying the controversy, we are attempting to deduce the ordinary from the exceptional; to learn how far the ecclesiastical procedure was just and equitable by reading the most prejudiced statements of its greatest enemies. It is, therefore, a matter for surprise that even this evidence should so largely exonerate the ecclesiastical judges from any determined attempt to encroach upon the proper jurisdiction of the common law.

No sooner had the misunderstanding become generally known than the press began to pour forth a large and varied assortment of tractarian literature. The pamphleteers were not slow to open the attack with radical assertions which the leaders did not adopt for a decade or more. In 1590 appeared *The Treatisour* and the *Notegatherer*,[2] which attacked the High Commission's new powers as a court of law, declared the *ex officio* oath illegal and inveighed against ecclesiastical procedure in general. They were answered next year by Bancroft's colleague, Dr. Richard Cosin, in his *Apology of and for sundry Proceedings by Iurisdiction Ecclesiasticall.* Then a number of treatises against the ecclesiastical courts, circulated (apparently in manuscript) between 1588 and 1597 by Richard Robinson. "dwelling in Cowe Lane, London,"[3] served to fan the flame. A new edition of Richard Crompton's *Authoritie et Iurisdiction des courts,* in 1594, contained statements displeasing to the civilians. William Fulbeck, a common lawyer as well as a civilian, in his *A Parallele or Conference of the Civil Law, the Canon Law and the Common Law of this Realme of England,* published in 1601, attempted to show how few differences there really were between the three, and hinted at the expediency of admitting, as Cosin had wished, that there was a royal ecclesiastical law, independent of the common law in matters of its own cognisance. Fulbeck also published a *Direction or Preparatiue to the Study of the Lawe, and the Pandectes of the law of nations,* both of which, like all these tracts, discussed the wide field of distinctions which later became so prominent in controversy. This voluminous tractarian controversy, fruitless enough in its ostensible results and wearisome to the modern reader, nevertheless fulfilled a useful purpose by distributing information, sifting extraneous matter from the real issues, and, on the whole, preparing both sides to meet each other on some general ground. It also unified the parties, taught each the numbers, character, and personnel of its supporters, and even in a measure induced a tentative and disorderly organisation. The bishops were the first to awake to the seriousness of the situation, and the first to take concerted action.

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[1] Of the many attempts to draw up a complete list of the cases of ecclesiastical cognizance, the most famous is in Coke's introduction to Cawdry's Case in V *Reports*, 40 a. A list in Cotton MSS. Cleopatra, F. II. f. 117 gives eighty-eight categories. In Lansdowne MSS., 253, f. 139-190 is a long treatise on the distinction between the jurisdictions.

[2] A diligent search for these has been unrewarded. We learn of them only from Cosin's answer.

[3] Barrington MSS. 22, f. 667, in Inner Temple.

In 1598, two papers, which seem to have been drawn up by Whitgift, Bancroft, and Cosin, were probably discussed and amended in Convocation and then submitted to the Privy Council. They called attention to various points (they did not term them abuses) which seemed to them reprehensible in the granting of prohibitions.[1]

The substance of these studiously moderate statements, mildly put in the form of questions, as if the bishops somewhat doubted the truth of their own conclusions, was that the judges issued writs which were legally bad. The bishops said that no prohibition ought to be granted, merely on the statement of a lawyer, that the ecclesiastical courts were considering a temporal matter, but that the common law judge ought to demand some proof that the assertion was true; and that this would be most easily accomplished by requiring him to submit a copy of the proceedings in the spiritual court (called the "libel"), in which he could point out the words claiming the jurisdiction to which the ecclesiastical courts had no right. Nothing short of such demonstration ought to be accepted, and certainly no sentences from the pleadings of lawyers at the bar, which the judge might have actually overruled, ought to be used as a basis for prohibitions. Then, the bishops very much doubted whether it was just to allow the plaintiff in the ecclesiastical court to bring a prohibition to defeat his own suit, and, per contra, when the defendant had allowed the case to proceed as far as the sentence, it was unfair to permit him, through a common law writ, to escape the consequences of his defeat. On the whole, they said, they believed that the reason for prohibitions had departed with the annexation of the Spiritual Headship to the Crown, for the ecclesiastical courts were now as much the Queen's as were the common law courts; indeed, they could see no reason why they might not as equitably prohibit the common law courts as suffer the latter to restrict their jurisdiction. All such writs ought to issue from the Chancery, because, as matters stood, the common law courts were judges in their own case, a position neither honourable nor justifiable. Dignified and moderate as these Articles were, they decided nothing, contributed nothing to the settling of the controversy, and are of value simply as marking the stage reached at that precise moment.

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[1] "Certaine pointes which the Reuerend fathers the Byshops and others executinge Ecclesiasticall Jurisdiction partlie by her Majesties imediate Commission under the greate Seale of England, and partlie by the ordinarie aucthoritie deriued from the Crowne, to desire the Lordes and others the Reuerend Judges of the Realme to consider of touchinge the grauntinge of Prohibitions." 1598. Cotton MSS. Cleopatra, F. I, f. 112. Cotton MSS. F, II, f. 313, and f. 433. Harleian MSS. 358, f. 186. Rawlinson MSS. B, 202, f. 110 b. "Certaine Collections and inferences concerninge matter of Prohibition and Consultations not unfitt to be thought uppon for the better preservation of her Majesty's Jurisdiction ecclesiasticall." (1598) Cotton MSS. Cleopatra, F, I, f. 109; and F, II, f. 309. Rawlinson MSS. B, 202, f. 108 b. Both the above are printed by Strype, *Whitgift,* II, 397 and 430.

The progress of the quarrel toward an issue[1] and toward the breaking point becomes at once apparent when we examine the Articuli Cleri of 1605, as Coke dubbed the Articles submitted to the Privy Council in October of that year by Bancroft, in the name of the clergy of the whole realm.[2] The immediate occasion for the drafting of this document seems to have been a verbal altercation in the Privy Council between him and the judges. The Archbishop charged them with abuses in the granting of prohibitions, and the judges present at once offered to answer his accusation in full whenever it should be formally presented to them.[1] The Articuli Cleri which Bancroft at once prepared and presented, show how clearly the crisis was approaching. The judges replied in the following spring.[2] Where, in 1598, the bishops had been content with requesting some changes in a few points of questionable legality, they now declared that the whole practice of prohibitions was a great abuse, tending to the utter overthrow of the ecclesiastical jurisdiction. Hitherto satisfied to appeal to the judges' own sense of justice and equity, the clergy had now lost all confidence in their probity and turned at once to the Privy Council not only to complain, but to demand, as a matter of law and justice, that these abuses be reformed. All idea of gaining anything by compromise or moderation had departed and the grievances of the Church were stated in no uncertain terms.

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[1] At the Bishops' Conferences in February 1603-4 with the Privy Council, many were of the opinion that "all causes are of ecclesiasticall cognizance which are not to be reformed by any original writt at the comon lawe." Additional MSS. 28571, f. 187.

[2] "Certaine Articles of abuses which are destined to be reformed in granting of prohibitions. Commonly called Articuli Cleri." (1605) Cotton MSS. Cleopatra, F, II, f. 319; Rawlinson MSS., B. 202, f. 112; All Souls College, Oxon., 221, f. 39; Harleian MSS. 1299, f. 95, b. ff; copy of the

Bancroft's first care was to place the subject upon a new footing. The main contention of the judges had been, and continued to be, that it was their prerogative, and theirs alone, to decide when, how, and in what cases, prohibitions or other legal writs should issue;—a dictum which, as the bishops had already pointed out in 1598, simply made them judges of their own case. As had also been said, it decided the case against the Church, for it was not to be expected that they would convict themselves of illegal proceedings. If neither set of judges was to decide the matter, and it was clearly not equitable that either should, there was but one equitable course, and the clergy espoused it, not perhaps because it was equitable, but because they had no other choice. "His Majesty hath power," they declared, "to reform abuses in prohibitions," and "to judge what is amiss in either of his said jurisdictions." Bancroft did not in the least contemplate the King's deciding actual cases of law, but contended merely that, where a judicial deadlock was already

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heads of these only, Cotton, Cleopatra. F, I, f. 114. See also Coke's *Institutes*, II, 601; Cardwell, *Documentary Annals*, II, 116; Wilkins, *Concilia*. IV, 417; Howell, *State Trials*.

[1] Articuli Cleri, art. I. "This is therefore the first point upon occasion lately offered before your lordships by some of the judges, we desire may be cleared." Is it not possible to infer from these words that the judges began the attack?

[2] The Judges' Answers to the Articuli Cleri. Copied in after each article to which it is an answer. Coke's *Institutes*, II, 601; in MSS. Harleian MSS., 827, f. 2; Holkham MSS. 677, f. 334. (Coke's copy.)

in existence, the King, as the fountain of justice, ought to settle the dispute by declaring some working compromise.[1] Nevertheless, whatever the equity of the situation was, the judges of the common law were certainly right in replying that for several generations, at the least, the Sovereign had not ordinarily decided what was or was not the proper technical method of issuing writs, and they were right in declaring that the processes of the law were not to be altered by informal agreement. In fact, all the traditions of the common law were against any such view as Bancroft put forward, and indeed, it was not his proposal to refer the question to the King which most antagonised the judges, but his attitude toward the law as something which could and ought to be reformed.

To the common lawyer of that day, *the law* was law, and was to be defined by the judges of the law; what they delivered as law, *was* law because they delivered it, and, however inexpedient or unjust it might be, if such was their decision, the dispute was at an end. Nor was it in the least the function of the judge to make law: he had only the right to declare authoritatively what the law was. His function was declaratory The whole issue was a question of fact, not of expediency; of what was, not of what ought to be law; a question to be decided by the precedents of the common law courts as understood by their judges, and not by opinions of ecclesiastics based very likely on the hardship the law caused the clergy or the desirability of changing it. *Whatever the law was,* King, bishops, and judges combined, had no right to alter it, and certainly least of all had the Archbishop the privilege of insinuating that the judges were either acting illegally or did not themselves know what the law was.

While the judges felt sure that they had the law on their side, they were quite ready to claim that equity and expediency were also in their favour. In fact, both parties put forward with some keenness their desire to succour the oppressed. The clergy complained of those "contentious persons, as do wittingly and willingly upon false and frivolous suggestions to the delay of justice, vexation of the subjects, and great scandal of ecclesiastical jurisdictions, daily procure, without fear either of God or men, such undue prohibitions, as we have heretofore mentioned." (art xxv.) The judges retorted that "now many turbulant ministers do infinitely vex their parishioners for such kinds of tithes as they never had, whereby many parishes have been much impoverished. . . . Where is the fault but in the minister that gave occasion?" "Now they grow so troublesome to their neighbours as were it not for the prohibition (as may appear by the Presidents before remembered) they would soone overthrow all prescriptions and compositions that are for tithes, which doth and would breed such a generall garboile amongst the people, as were to be pitied and not to be permitted." (art. xv.)

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[1] "The clergy well hoped, that they had taken a good course in seeking some redress at his majesty's hands concerning sundry abuses offered to his ecclesiastical jurisdiction, by the over frequent and undue granting of prohibitions; for both they and we supposed (all jurisdiction both ecclesiastical and temporal being annexed to the imperial crown of this realm) that his highness had been held to have had sufficient authority in himself, with the assistance of his council, to judge what is amiss in either of his said jurisdictions, and to have reformed the same accordingly; otherwise a wrong course is taken by us, if nothing may be reformed, that is now complained of, but what the temporal judges shall of themselves willingly yield unto." (Articuli Cleri, art. i.)

Turning to the more specific complaints, the clergy found fault with the old form of prohibition because it declared that the ecclesiastical courts were not the King's courts and that the ecclesiastical law was not the law of the land (art. ii);[1] and with the new form of consultation because in it no definite cause for granting the prohibition was expressed,[2] "by means whereof the temporal judges leave themselves at liberty without prejudice," to grant another prohibition on that selfsame matter on which they have just issued a consultation.[3] The judges replied, that the old form, having always existed, could only be changed by Act of Parliament, and, as for the new form, it had been adopted "for brevity's sake" and could not be altered to suit the whim of the Court of Arches. Yet, in all strictness of law and justice, if the old form could be altered or supplanted only by Parliament, how had the judges been able on their own authority to employ another "for brevity's sake?" Was the consultation of less importance than the prohibition and less bound by precedent? And if they could formulate a new writ for any purpose, could they not, if they wished, make it conform to the reasonable desires of the ecclesiastical judges, for few will deny that the latter ought to be informed in the writ in what cases they were to be allowed to proceed?

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[1] This was good English law of the days when the ecclesiastical courts still "spake Romish" and were a part of the papal system. Nor did the bishops deny this: they did insist that there was neither rhyme nor reason for declaring that it was still law.

[2] They "do only tell us that they grant their consultations, certis de causis ipsos apud Westm̃. moventibus, not expressing the same particularly according to their ancient precedents." Art. vii.

[3] The real objection of the civilians was that the judge might not be able to see in the information submitted to him any good reason for granting the writ, but once he had the whole case before him, when the prohibition was argued, he would soon be able to turn the many-sidedness of the issue to account and retain the case to the increase of his own jurisdiction, to the detriment of his enemies, and to the benefit of his own pocket from the fees that accrued. "I feare mee as emulation betweene the two Lawes in the beginning brought in these multitudes of Prohibitions, either against or beside law, so the gaine they bring unto the Temporall Courts maintaineth them." (Ridley, *View*, 127.)

The clergy next complained (art. iv) of the excessive number of prohibitions which the common law judges had issued during the last years of Elizabeth's reign and more particularly since the accession of James. "The humour of the time is grown to be too eager against all ecclesiastical jurisdiction," they declared, for prohibitions had been issued "in all causes almost of ecclesiastical cognisance."[1] During the reign of the late Queen, 488 prohibitions had been granted against the Court of Arches alone, and since her death, 82 to the same court, of which number, they begged the judges to show them one-twentieth which had been properly granted and upheld in a cause which was not by strict law of purely ecclesiastical cognisance. Without attempting to reply, the judges declared that "upon these generalities nothing but clamour can be concluded," and desired particulars to which some fitting answer could be given. They said, however, that the ecclesiastical estimate of the number of prohibitions was wrong, for since the accession of James, only 251 prohibitions issued from the King's Bench to all the ecclesiastical courts, of which 149 concerned the *modus decimandi*, and that the Common Pleas had granted in all, 62, of which 31 were upon the *modus decimandi*. Given the facts as the judges admitted them to be, and the situation was bad enough from Bancroft's point of view. The number of prohibitions was, in itself, however, only a minor grievance, for the real clerical objection was, that, of this considerable total, the majority were prohibitions on one and the same suit from several courts, or several from one court, or the multiplication of prohibitions of the same general character as those on which consultations had already been granted in other suits. (arts. v and vi.) The clergy contended that the judges ought not to issue writs which they themselves knew could not be sustained. Nor should they countenance requests from defeated suitors in the ecclesiastical courts who had allowed the case to proceed to sentence: "yea after sentence, yea after two or three sentences given, and after the execution of the said sentence or sentences, and when the party for his long continued disobedience is laid in prison." (art. iii) Furthermore, declared the aggrieved clerics, the plaintiff in Court Christian, the man who had voluntarily begun his suit there after consideration of the legal possibilities, ought not to be allowed to prohibit his own case, when the tide began to turn in favour of his opponent. (art. x) To all these gravamina the judges had one reply: "Prohibitions are not of favor but of justice to be granted," and if a man has any colour of right to such a writ, it must receive recognition whether he is the plaintiff or defendant, whether he appears before or after sentence at ecclesiastical law, and even when the common law judge himself knows that he cannot sustain the writ on its return.

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[1] "The Prohibitions of fact or of men, are both infinite and odious for that there is, well nigh, no matter either Civile or ecclesiasticall, be it ever so cleer or absolute, but they clog and incumber it with some Prohibition and the matter they containe is (for the most part) absurd and frivolous." Ridley, *View*, 127.

"A great abuse and one of the chief grounds of the most of the former abuses," continued Bancroft, lay in the practice of the common law courts in granting prohibitions without sight of the libel of the ecclesiastical court, "yea sometimes before the libel be there exhibited." (art. xi.) In other words, the judges had accepted the bald statement of a lawyer, that in this case the ecclesiastical courts had exceeded their jurisdiction, and did not ask for even such elementary proof as could be supplied by the sight of the libel or declaration upon which the ecclesiastical court was proceeding, a method of action characterised in legal phrase as the issuing of prohibitions upon "surmise."[1] The clergy wished no such writs granted at all, but Bancroft proposed, as a compromise, that in future all prohibitions upon surmise should issue solely out of the Chancery, a scheme which would at any rate prevent the multiplication of such writs in one and the same suit.

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[1] Properly, prohibitions were issued only on "suggestion," that is to say, by demonstration that the ecclesiastical judge was actually trying a temporal matter, an end usually accomplished by submitting copies of the libel. While these prohibitions issued on "surmise" without proof of any sort were not numerous, they were growing in number because the ease of obtaining them made them popular with the attorneys, and because their vagueness made them a peculiarly useful offensive weapon in the attack on the ecclesiastical jurisdiction. Dr. Gardiner (*History of England*, II, 36) seems to have lost sight of the technical meaning of the prohibition on surmise and founds on this article an opinion that Bancroft wished to have *all* prohibitions issued by the Chancery, because the chancellor as a

This was by far the most difficult point for decision which was presented in the Articuli Cleri of 1605, because the right and wrong was clear, but the law of the matter was in considerable confusion. The Act of 2 and 3 Edward VI, c. xiii, section 14 explicitly ordered the presentation of the libel to every judge of whom a prohibition was asked, but the common law judges declared this clause was annulled by the succeeding clause which stated that neither the Act, nor anything contained in it, should extend to give the ecclesiastical courts jurisdiction over any matter, cause, or thing, repugnant to previous statutes, nor ''yet hold Plea in any matter whereof the King's Court of Right ought to have Jurisdiction.'' Prohibitions were not mentioned, for the clause concerned jurisdiction and not the manner in which it was to be made effective, and the statute furthermore applied only to tithe cases; but the judges assumed that they had a right to hold plea of the subject matter, then applied the general proviso saving their jurisdiction, and thus concluded that they were not compelled to demand a sight of the libel.[1] They also found some cases in the Year Books and Abridgements[2] which they asserted were directly in point, but which the clerics openly flouted, retorting that they were not decisions at all but the comments of some serjeant. And that, even if they were valid, they had been annulled by this statute, which was many years later in date. Whether that was true or not, there was neither reason nor justice in issuing a prohibition to the ecclesiastical judge for trying the right of tithe pigeons when the case before him really concerned the tithes of wool and lambs. As for the prohibitions, which declared that the ecclesiastical courts would not countenance the plea of a *modus decimandi,* these simply added

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state official was more amenable to political influence than were the judges. Bacon, in later years, did advocate such an expedient from just such reasons, but there is no evidence to show that Bancroft ever entertained the idea, and certainly the Articuli Cleri, art. xiv, will not bear this construction without unwarrantable straining.

[1] Yet there was clear precedent in Brook's *Abridgement* for 31 Henry VI against this contention of the judges and in favor of Bancroft's point; Edition 1573, II, f. 165 b. No. 20; another case, No. 26, 13 Henry VII.

[2] For instance, Brook's *Abridgement,* II, f. 165 b. No. 17, for 31 Henry VIII.

insult to injury, complained Bancroft, for the supposition was completely false;[1] and rested upon "a quirk and false supposition in Edward Fourth his time, made by some serjeants." (art. xv.) Every *modus decimandi,* which was properly proved, received as much deference in the ecclesiastical court as it could at common law. Closely akin to this grievance, was the granting of prohibitions on the surmise that the case at ecclesiastical law was neither matrimonial nor testamentary, (art. xiii) an excellent point from the common law view, because the old precedents, which had come down from the Middle Ages, were unanimous that cases of real property, which were neither matrimonial nor testamentary, belonged to the common law courts. Of the *prima facie* justice of the prohibition, upon such a suggestion or surmise, there could be no doubt; the difficulty now arose because the judges no longer insisted that the case should be one of real property, but, arguing that the *modus decimandi* or right of tithes concerned the increment from land and was neither matrimonial nor testamentary, readily concluded that it was to be heard solely at common law. In a similar fashion, complained the clergy, by proper quibbles even heresy and schism, and all matters of ecclesiastical discipline, might be made subjects of temporal jurisdiction.

From all these abuses, the clerics drew the conclusion that the judges were determined to interfere with their courts whatever the law and justice of the question might be, and they regarded as strong corroborative evidence the prohibitions granted upon "frivolous suggestions." "Upon a suit of tithes brought by a minister against his parishioner a prohibition flieth out upon suggestion that in regard of a special receipt, called a cup of buttered beer, made by the great skill of the said parishioner, to cure a grievous disease called a cold, which sorely troubled the said minister, all his tithes were discharged.'' (art. ix.)

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[1] The common law judges asserted again and again that the ecclesiastical judges would not receive *any* plea of a *modus decimandi* however substantiated. Coke took his stand upon this point in 1609. See also 2 *Reports,* 43, 44 b; and Ridley's *Viewe of the Civile and Ecclesiasticall Law,* 180; and other tracts. The Court of King's Bench in Tryor v. Bestney Betts, (36 Eliz.) *Croke,* I. 317 and 318, said "the Spiritual court will not allow a plea of modus decimandi but only of payment of tithes in kind . . . and therefore the common law shall aid him." The ecclesiastical judges and lawyers denied it stoutly. Probably in many instances, the common law asseveration was true, that the ecclesiastical courts refused to accept as *valid and conclusive* a *modus decimandi* which the common law courts thought valid and conclusive. In perhaps an equal number of instances, the ecclesiastical holding was true, though a common lawyer would point out that the common law judges after all simply refused to allow the defendant on a prohibition to traverse the declaration as something *prima facie* wrong. It is impossible conclusively to demonstrate by any evidence now accessible, where lay the preponderance.

The sum and substance of the Articuli Cleri and of the judges' answers may be given in three words, complaint and denial, and for the time, the dispute—if such it deserved to be called, where neither side vouchsafed to argue—came to no conclusion at all. There is plenty of evidence, it must be confessed, to prove that the contentions of the clergy were in the main true, and that there were many abuses in the manner in which the judges exercised their legal authority. The champions of the common law seemed, moreover, very ready to ride rough-shod over the manifest intention of the Edwardian statutes for the payment of tithes, which stated that they had been passed in order to give laymen rights at ecclesiastical law, because they were already without remedy at common law for the unlawful detention of such dues, and as laymen could not sue in the ecclesiastical courts. To assert, then, as the judges did, that the common law, independent of the statutes, allowed laymen to sue at common law in cases of tithes in preference to suing at ecclesiastical law, was going pretty far. Was no deference due to a plain statutory declaration of what Parliament understood the law to be? Was no importance to be attached to the customary procedure of the ecclesiastical courts? Were ecclesiastical precedents of no validity at all in deciding a dispute between the two jurisdictions?

Yet, on the whole, there had been very little said in either the complaint or the answer about what the law was: each assumed that the law was in itself equitable and just, although it began to be evident that the disputants by no means agreed as to where that law was to be found. The Churchmen had not denied that the judges might legally issue prohibitions, and the judges had conceded tacitly that there was a limit to their interference with the ecclesiastical courts. The whole contention on the one side had been that the judges had not observed the forms and spirit of their own law, and on the other, that the technicalities of common law procedure might work evil in some instances but that there could be no question of the legality of those forms nor of the essential consonance of their administration with truth and justice.

The judges in fact did not answer at all the point raised by Bancroft. They assumed that the law and their declarations and practices were one and the same, but as yet they did not say so.

As Bancroft had read the grievances of the clergy before the Privy Council in the Presence Chamber at Whitehall, no doubt the Answer of the Judges was presented in the spring of 1606 in no less dignified a fashion. Then came conferences of both clergy and judges with the Council, and, doubtless, some acrimonious speeches passed between the Archbishop and the Chief Justice, which would be interesting reading if we had them. Convocation, then in session, presented to the King a petition in which they complained that "they haue bene very much of late years defrauded of their Tithes, and debarred from obteyning their right due unto them by the ecclesiasticall Lawes of the Church through Prohibitions procured by those which wronge them out of your Majesty's Temporall Courtes to your Suppliantes great hindrance molestacon and utter impoverishinge in time if remedy bee not provided, besides the stoppinge of Justice, occasion of periury, and further wronge and overthrowe of your Ecclesiastical Jurisdiccon as though it were an unjust usurpacon of forraigne power against your Majesty and Crowne, and not the due execucon of your Majesty's owne rightfull power and iust Jurisdiccon in Causes Ecclesiasticall."[1]

A temporary truce was patched up, which the King as well as Salisbury believed at the time, would be more than ephemeral in its results. "I am commanded expressly by his Majesty to signifie to your lo:" wrote Secretary Lake to Salisbury, "how much he is pleased with the discourse your lo: hath written of the conferences, which though he acknowledge to have been very painfull to your lo: after so many laborious sittings and other dispatches of his affaires . . . His Majesty seemeth to hop by the successe of that dayes worke that all the controuersies about these Church courtes will ether dye or be weakly pursued."[2]

About a month later, James elevated to the Chief Justiceship of the Common Pleas, a man who was prepared to devote the powers of a mighty intellect, the diligence of an inexhaustible energy, the resources of a legal acumen which has probably never been rivalled in England, and the learning acquired by years of delving in the authorities of the law, to demonstrating and enforcing the common law contentions, which the King believed to have been set so completely at rest. Coke very soon infused into the common lawyers that same feeling of institutional strength and that same belief that all must stand together for the good of the law as an institution, which Bancroft had so successfully roused in the clergy.

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[1] Harleian MSS. 827, f. 1 b.

[2] Hatfield MSS. 116, f. 34. May 6, 1606. Holograph.

The renewal of the strife was, however, afar off, and we must leave the Archbishop and the Chief Justice planning their campaigns, to follow the fortunes of the English Catholics and their attempts at organisation.

CHAPTER III

THE GUNPOWDER PLOT AND THE OATH OF ALLEGIANCE

The death of Elizabeth had, for the time being, put an end to the eagerness of the secular priests to come to terms with Bancroft, and had even caused them to lay aside their grievances against the Jesuits and to draw closer to the Society than they had for fifteen years. In truth, while the two had been seriously estranged because of a difference of opinion as to which was the best method of promoting the welfare of the Catholic faith in England—a secret understanding with the State or an aggressive proselytism supported at the right moment by a foreign army—neither was so blinded as to lose sight of the long-cherished hope that the son of Mary Stuart would reinstate Catholicism. Neither was foolish enough to sacrifice that hope in order to dispute which should control the organisation under the new Catholic king, and each saw that, when something had actually been accomplished, there would be time enough to wrangle over the leadership. Much to Bancroft's chagrin, then, the secular leaders met the Archpriest and the leading Jesuits in London some time in April, 1603, to concert measures "for restoring religion or obtaining toleration."[1] After a month of discussion, the seculars and their titular head came to a definite agreement at a meeting of May 13, to bury all past quarrels. They drew up and signed a memorandum to the effect that "there shal be no strangeness amongest us nor exception taken one against the other but that we live in union and mutuall love and frendly offices one towardes the other as Catholique priestes ought, to be as thoughe the Controuersy neuer had bene. That the Popes last briefe was published before Christmas and that all persons by notice thereof are bounde to the obedience of the same and that our Archpriest desirethe nothinge more than that the pointes therin contained may be putt in execution. Whosoeuer shall thinke himselfe any way aggrieued by worde or writinge he is to make relation thereof either to the Archpriest or to any of the Assistantes or other lawfully appointed superior, and without spreddinge the difference amonge the Laitie and that we all indevour to the uttermost of our power to defende and maintain one the others creditt and reputation. That we all agree in one uniforme Course to move His Majestie to mitigation or release of our miseries and that euery one deale with his Charge and acquaintance to concurr to the furtheraunce of the same."[1]

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[1] Watson's Examination, August 18, 1603. Tierney's *Dodd's Church History of England from the Commencement of the 16th Century to the Revolution of* 1688, *with notes, additions and a Continuation.* (London, 1841) (Cited in these volumes as "Tierney.") IV, xxiv, note. Jesuit reports were also spread to the effect that Watson was set on by Cecil and Bancroft "to betray all Catholics and bring them within compass of treason." Watson's Confession, (Tierney. IV, xxxiii). This is interesting in view of Fr. Gerard's similar charge against them in regard to the Gunpowder Plot.

The Bye Plot disturbed these amicable relations but little, for all sections of the Catholic clergy tried to betray Watson, and chance alone gave the seculars the credit of communicating the first definite information. Indeed, so far had the reconciliation progressed by the following August that Bancroft feared the seculars would forsake him altogether and divulge his secrets.[2] Nevertheless, he had sufficient faith in their previous protestations to wait, and he steadfastly refused to execute the proclamation of November, 1602, declaring that he was utterly unwilling to "drive men to impatience." This stand seems to have occasioned some difference of opinion between him and Whitgift, and perhaps caused Cecil publicly to deny that the State would support so lenient a course.[3]

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[1] "M° that the R. Archpriest and we whose names are subscribed mett together and agreede upon the pointes ensuinge." S. P. Dom. Jac. I, Vol. 1, no. 80, May 13, 1603.

[2] Bancroft to Cecil, Hatfield MSS. 101, f. 108. Holograph. August 9, 1603. "Now it seemeth ye priests will seek favor amongst others; and leave both your Lo: and me: whereby (as yow knowe) we shal be much hurte."

[3] "Since the time limited in the late proclamation expired, little hath been yet done against priests or Papists, and I think very few or none departed upon the same, nor any certainty is yet known when the priests in prison shall be sent to exile. You heard by your Brother Richard what Cecil gave out of the Bishop of London his words and intention against Jesuits. I am well assured the Bishop denieth all, saying that however those courses were approved in Walsingham his time, and now he disliked them altogether, viz: to drive men to impatience and to draw men to danger; and being asked what he would do by virtue of the proclamation, he said that it was principally procured by the late Archbishop of Canterbury, who should have provided that it might have been executed, now he being dead, it was yet uncertain what courses therein should be taken." Father Rivers to Cornelio, April 4, 1604. Foley, *Records*, I, 60-61.

James, moreover, was a new element in the situation and puzzled all parties for a year or more. According to the rumours widely spread by the priests, he had agreed, while still King of Scotland, to tolerate the Catholics if he succeeded to the English throne, but, in May, 1603, orders had gone forth to collect the recusancy fines. Strangely enough, the Bye Plot caused no sudden severity in the execution of the law, and scarcely a week after its discovery, before the examination of the captives was fairly begun, the King received a deputation of prominent Catholic gentry with unusual fervour, and, according to report, agreed to remit the penal laws.[1] During the summer, petitions were presented, tracts printed, and signatures openly procured to the "Catholiques Supplication."[2] No wonder the Catholic hopes were high and that the underhand negotiations with the Bishop of London languished. Then the King's policy (it is sufficiently clear that Bancroft or Cecil had little or nothing to do with it) veered round to severity, only to return to the idea of clemency, and so vacillated back and forth that by summer of 1605 no one knew what to expect. During the fall of 1603 and most of the year 1604, James had also been negotiating with the Pope's nuncio in Flanders, and penned ambiguous phrases which might be construed to mean that he was willing to recognise the Pope as his spiritual head and the Roman Catholic Church as his mother.[3]

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[1] Tierney, IV, 37, note. "A Petition Apologetical" printed at Douay in 1604 claims in its preface to be the one which the gentry presented James in July 1603. The preface gives this version of James's promises. The exemption from fines "the said Lords signified that they shold so long enjoy as they kept themselues upright in all ciuill and true carryage towardes your Majesty and the State without contempt; whereunto reply was made, that recusancy might be held for an acte of contempt: It was answered by the Lordes of the Counsell, that your majesty would not accompt recusancy for a contempt."

[2] Among others was printed "*The Coppie of the Banished Priestes Letter to the Lords of his Maiesties Most Honourable Priuy Council*, September 24, 1604. On the condition of seculars at this moment see Stonyhurst MSS. Anglia A, VI, no. 50. October 8, 1603, newsletter.

[3] There is a great deal of material on this interesting topic, some of which does not seem to have been fully utilised, but it is not possible to treat it here. In the Hatfield MSS. 101, f. 142, is the original of the letter of Innocent, Bishop of Camerin to James, and in Hatfield MSS. 112, f. 150 (wrongly cited by Gardiner, *History,* I, 141, as vol. 120, f. 150) is the draft of a reply; while another copy docketed "about the end of October, 1605," (Dr. Gardiner placed the paper under 1603) is in Hatfield MSS. 134, f. 74. See also Hatfield MSS. 105, f. 3; 107, f. 148; and a correspondence of Salisbury and Edmonds as late as October, 1605, in Stowe MSS., 168.

Parsons wrote a flowery letter of congratulations to James, October, 1603, (Stonyhurst MSS. Anglia, A, III, no. 36). The cause of this attempt to negotiate seems to have been Garnet's opinion that James would

The Pope was delighted and soon spread a report through Europe that the King of England had asked for instruction and would shortly announce his conversion after the notable example of Henry IV of France. At this, James was wroth and neglected to answer the effusive epistles smuggled across the Channel.

Nevertheless, the Catholic laity, aside from such extremists as Catesby and Winter, was, on the whole, satisfied. Whatever James said, they knew well that there had rarely been a year, since the accession of Elizabeth, when so few men had been detained in prison, when so few fines had been collected, (many, however, were imposed,) and when so little attempt had been made to check the performance of the ordinary rites of their religion.[1] At various times, the judges or bishops [2] had indeed been ordered to inquire diligently into the number of recusants, and to return the number indicted, but, as comparatively few convictions had resulted, the whole proceding was regarded more as a census of recusants than as a really vigorous attempt to enforce the law. The degree of en-

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receive a nuncio very favourably. His holograph letter to Parsons of April 16, 1603, is in Stonyhurst MSS. Anglia, A, III, no. 32. In the correspondence of De Beaumont, the French Ambassador to England, with de Béthune, the French Ambassador at Rome, may be found the rumours and loose talk picked up at Paul's and in the royal ante-chamber. Bibliotèque Nationale (Paris M. 3490.) The English Ambassador at Paris seems to have made representations, in December, 1603, to Henry IV, to the effect that the Jesuits in England were supported by money and aid from France, which he ought not to permit. The copy of the memoir is in Cotton MSS. Caligula, E. X, f. 227, 330. December 9 and December 29, 1603. On this whole topic of the papal relations with James I, see an interesting book, A. O. Meyer, *Clement VIII und Jacob von England.*

[1] The Venetian Ambassador wrote that Cecil told him: “the King's excessive clemency has ended in this, that priests go openly about the country, the city and private houses, saying mass.” *Calendar*, X, No. 353. Bancroft stated in an official letter to the bishops of March 12, 1604-5, “it is much marvayled that so many priestes and Jesuites roame about in our diocesees without any impeachment or regarde allmost had of them: wee ourselves seldome or never seekinge after them.” S. P. Dom. Jac. I, XIII, no. 25. The French Ambassador, wrote Rivers to Parsons, in April, 1604, (Foley, *Records*, I, 60) “is an earnest suitor to the King in the behalf of the Catholics.” He “seemed to retain the patronage of the appellants (as at Rome in 1602) whose books, petitions and memorials, he exhibiteth to his Majesty.” James himself wrote in his *Apology for the Oath of Allegiance*, (*Works*, 1616, p. 253, 254). “How free and continuall accesse had all rancks and degrees of Papists in my court and company? And aboue all, how frankly and freely did I free Recusants of their ordinarie paiments? Besides, it is euident what strait order was giuen out of my owne mouth to the Iudges, to spare the execution of all Priests. . . . It can neuer bee prooued, that any were or are put to death since I came to the Crowne for cause of Conscience.”

[2] Bancroft's orders to the bishops concerning recusants, March 12, 1604-

forcement is an academic question, whose solution, one way or the other, will not alter the fact, that the penal laws hampered Catholic movements very little in the early years of the reign of James I. Both clergy and laity proceeded with their plots and plans, their meetings and discussions, their appeals to Rome and their intestinal quarrels, precisely as if no laws existed at all. After all, the substance of toleration was more valuable than the name. So much the Catholics had; what they demanded was the certainty of its continuance: they wished to be freed from the suspense of living in danger of Tyburn, the Assizes, and pursuivants. The issue, too, was not of ecclesiastical significance. The bishops had little to do with the Catholics and what little they did was rather the collection of information through the visitatorial system than the enforcement of the laws.[1] So far as Bancroft was connected at all with the penal laws, it was as a great officer of state, as Privy Councillor, rather than as Archbishop. These questions, in fact, concerned the relation of the Catholics to the State, not the Church: they were political, not ecclesiastical, issues.

The really vital issue was the controlling of this illegal organisation of Catholic priests which force had not suppressed. Here no material change had taken place since the accession of James, because the situation was so complicated that any move was fraught with extreme peril. No one was willing to take any decisive step until something should happen to render action imperative. The truth was that no one dared to trust the promises and protestations of any one else. Bancroft had little faith in the seculars and none at all in the Jesuits: Bluet and Colleton distrusted Blackwell and all who supported him, who naturally reciprocated the feeling: Garnet, Gerard, and Holtby, the Jesuits, were afraid to communicate with the seculars for fear that they would betray them to Bancroft. Even among nominal friends, no one knew whom to trust: the seculars and Jesuits suspected that many of their adherents were really in the other's pay; neither knew how many

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5. S. P. Dom. Jac. I, XIII, no. 25. Printed in Wilkins, *Concilia*, IV, 410, with modernised spelling and a few minor errors. Also on the judges see Winwood's *Memorials*, II, 77, June 21, 1605. The judges' returns of the number of recusants in 1604 are in Tierney, IV, xciii. The proclamations, the statutes of 1604, etc., etc., have been described and reprinted many times.

[1] This opinion is derived from a careful study of the material in the Record Office and more particularly from the Visitation Records, where there is very little to show that the bishops ever did anything at all.

there were also in the pay of the State; Bancroft was certain that there were spies in his own retinue and in the Privy Council office.[1] Each was waiting for some turn of the tide, some change in the political situation that would give them a really good chance of victory.

Bancroft had at last developed a distinct policy. In 1598 he had hardly dared to hope that he might accomplish more than the sowing of such discord in the Catholic ranks that the whole strength of the party should never be thrown at once in favour of any scheme or plot against the State. He had then possessed so little reliable information, and had seen so many possibilities of an adverse outcome of any dealing whatever with such men, that he had been chary of allowing himself to follow any policy except a thorough-going opportunism. Until he knew that the breach between the Jesuits and the seculars could not be healed, until the loyalty of the latter to the Crown had been more thoroughly tested, and until there had appeared some assurance that the Catholic laity would follow the leadership of the seculars and not of the Jesuits, every scheme must be intangible and visionary. If the Catholics could not be frightened into obedience, and were far too numerous to be constrained by force, could they not be led? Could they not be controlled by the institution of this extra-legal but permanent organisation which, the seculars declared, should aim merely at supplying the spiritual needs of the Catholic laity, whose services should be secret, whose priests should exhort their followers to peace and loyalty to the Crown, and whose funds should be expended within the realm solely for the support of this priesthood? The nucleus for the organisation already existed in the Archpriest and his assistants, and in the priests stationed in various parts of England, but it was controlled by the Jesuits. Let the seculars be put into control of it; let the connection with Rome be restricted to purely spiritual matters and to questions of ordinary administrative routine; let the priests take an oath to the Crown, promising loyalty and the revelation of all plots; let them be given to understand, that, so long as public order was not openly violated, so long as no open scandal was caused by overt disobedience of the laws, the ordinary Catholic masses, christenings, and burials would not be interrupted—and the difficulty would be solved. Bancroft's own connection with the priests, unofficial and even treasonable though it was, could be continued by his successor. He would show the Catholics that they could expect more from their own countrymen than from foreign Jesuits. He would show them that, in exchange for loyalty, essential though not legal toleration would be accorded them. He would teach the leaders to come secretly to him and redress their grievances by peaceable conference, where, by argument, expostulation, and a demonstration of the resources of the State, violent plots and movements could be effectually prevented. Thus sedition would be stopped, compromise invited, and, best of all, a continual stream of trustworthy information kept flowing into his hands, which would always give him the key to the situation. Thus, in time, there would be an English organisation of the English Catholics, bound to Rome by the slightest of ties, pledged to political loyalty, and secretly controlled by the Bishop of London.

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[1] He rarely could tell who they were. One man, Rice Griffiths, whom he sent to the Bishop of Hereford, gave out in Herefordshire "that my Lord of Canterburie had perswaded the King that all those tumults were nothing but a broken head or two. . . . Of late I have found him," wrote the Bishop to Salisbury, "plainlie a perfidious man to the state, a sycophant unto mee, and a meere agent and spye for the Papistes. . . I apprehended him and committed him. Att the assizes came letters from my Lo: Archbishopp that the Judge should forbeare him and transmitt him to his handes, and hee is indeed dismissed upon bond to appeare in the King's Bench the next terme, to the greate applause of papistes, to the great appaling of many well affected men." Hatfield MSS. 191, f. 8. August 9, 1605. Original. Signed.

The one thing needed was the right opportunity, and suddenly, from the most unexpected of all sources, it appeared. The Gunpowder Plot, which the conspirators had hoped would establish Catholicism upon the ruins of Church and State, established the Catholic Church in England as it stands to-day—an extra-legal organisation pledged to political loyalty and secretly in close touch with the English Government.

There is no need to repeat the familiar narrative of the plot or to more than refer to Dr. Gardiner's masterly refutation of the thesis of Father Gerard. The truth seems to be that Catesby and Winter, men of a more or less visionary stamp, conceived the plot from reasons as mistaken, and as far from being shared by the majority of Catholics in England, as were those that inspired the unfortunate Watson. As the Bye Plot had been the work of the over zealous seculars, so the Gunpowder Plot was contrived by rash Jesuit followers, and in neither case is it likely that the majority of the Catholic party knew of the undertaking or approved of it. Abundant evidence proves that the Pope, the General of the Jesuits, and most Catholic laymen in England, believed that any plot undertaken at this precise juncture must injure their cause far more than it could aid it, and stringent orders had accordingly been forwarded from Rome to Blackwell, the Archpriest, and to Garnet, the Vice Prefect of the Jesuits, to check any movement of the kind.[1] Sometime in the summer of 1605, if not earlier, Garnet seems to have become aware of the existence of a plot of some magnitude, without, however, learning much about the details of its execution or ascertaining the names of the conspirators.

He certainly knew of a plot and found himself in an exceedingly difficult position. Well aware that his superior at Rome, and even the Pope, had strictly forbidden violence, and that both were convinced it would only hurt the general cause, he could not see the situation in precisely the same light. To his mind, the prospect of converting England to Catholicism was growing less year by year and was, even now, so slight that it could be effected only by some bold and desperate coup d'état. The scale was turning against the Jesuits: the Archpriest was no longer technically responsible to them; a growing party among the secular priests had publicly repudiated their leadership, and was pledged to a scheme which seemed to Garnet nothing less than the complete renunciation forever of the grand project of converting England to the true faith. Each year, nay, each month, the laity became more puzzled by the conflict of opinions among their natural leaders, and were fast losing their confidence in the Jesuits and in the feasibility and desirability of Parsons' far-reaching plans, and were coming to look with favour on the seculars and to contemplate with satisfaction the idea of compounding or compromising with the State. Foreign powers were no longer eager for strife. Spain had made her peace with James, and Henry IV of France would certainly not aid in an armed invasion of England or countenance such a war on the part of any other power. At this crisis, thought Garnet, so decisive a blow as the destruction at one stroke, of the King, the bishops, and the nobility of the realm, would rally the seculars and the lay Catholics about the Jesuit standard and bring from Spain an army to assist in the final subjugation of the leaderless and demoralized Protestants. Such a disaster as the plot, if successful, might reasonably entail, had been prayed and hoped for this long time by Parsons and his colleagues, and here it was ready to do their work for them without their lifting a finger. For promises of half so much "good," Parsons had more than once paid false blackguards considerable sums of money, and here it was to be had for nothing! After days and nights of prayer and thought, Garnet concluded that he could not conscientiously hinder the execution of the plot, and comforted himself with the assurance that, after all, he knew nothing about it in detail, and might be excused for discrediting such reports as he had received.

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[1] Aquaviva, the General of the Jesuits, wrote to Garnet, "We have heard although clearly and very secretly what I am persuaded your reverence knows, that the Catholics are planning something for liberty. . . . Our Holy Father orders me to write to your Reverence in his name that you should use all your influence . . . that nothing of the sort should be discussed or carried out." It would greatly hurt the Catholic cause. (June 15, 1605.) S. P. Dom. Jac. I, XIV, no. 41. Sir Everard Digby wrote to his wife that Garnet said to him in reply as to what the Pope's command meant, "that they were not (meaning priests) to undertake or procure stirs: but yet they would not hinder any, neither was it the Pope's mind that they should, that should be undertaken for the Catholic good." Barlow, *Gunpowder Treason, Digby Papers,* No. 9.

Some two weeks or more before the day appointed for the meeting of Parliament and the springing of the mine, the Government also knew of the plot, perhaps even before the arrival of the famous letter to Lord Mounteagle, but was probably not aware of the details.[1] Salisbury's and Bancroft's policy toward the Catholics makes it seem unlikely that either would have fostered the plot on purpose to rouse the King to greater severity. If such was the object, the public discovery of the plot, though carried out with all the dramatic completeness that the most skilful plotter could ask, failed to produce the effect desired, for, as will presently appear, the penal laws were not enforced with unusual severity in the following year. Moreover, the negotiations of Bancroft with the seculars were, at that moment, approaching agreement, and the embroiling of Catholic and Protestant through the discovery of such a plot would have been the best possible means of destroying the confidence which it had taken years of tedious negotiations to create. If Salisbury had a hand in developing the plot at all, as is possible though hardly demonstrable, he very likely did it with the idea of discrediting the Jesuits with the Catholic laity and seculars in order to force the latter to accept the terms which Bancroft had been offering them. Probably, the Powder Plot was matured by its originators without direct aid, either from the Jesuits or from the Government. In due time, Fawkes with his lantern was caught in the cellar of the Parliament House, and, next morning, the conspirators were speeding their horses toward Warwickshire.[1] Beyond being present as Privy Councillor at two or three examinations of minor prisoners during the long investigations that followed the discovery of the Plot,[2] and beyond being appointed custodian of one or two of the Catholic nobles who were at first suspected of complicity in it,[3] Bancroft took no part in the prosecution of the Gunpowder traitors. So far as any ecclesiastic was prominent, it was the Bishop of London, who performed functions very similar to those Bancroft had performed during the investigation of the Bye Plot.[4] The State had been threatened, and took upon itself the whole duty of probing the mystery and of meting out justice to the conspirators.

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[1] See on this point, in addition to Gardiner and Gerard, a volume by Philip Sidney, (London, 1905. 2nd Edition). *A History of the Gunpowder Plot, the Conspiracy and its Agents.* Ingenious, but uncritical.

In fact, the subject of vital importance to the Church was not the plot itself, but the attitude of the various Catholic factions toward it. What all parties had been waiting for—a test case—had at length arrived and found them all unprepared. The seculars acted first. Blackwell, the Archpriest, wrote, on November 7, 1605, a letter [5] to the Catholic clergy and laity which must have been the product of a great deal of discussion and debate between the secular leaders during those days of terror,—November fifth and sixth. It was a complete renunciation of the Jesuit platform, was issued to the Catholic party as a whole, and marked a great widening of the breach that already separated the two factions. Blackwell declared the plot ''intolerable, uncharitable, scandalous, and desperate,'' ''in the malice whereof had been entrapt our friends, strangers, and many others our well-willers of all sorts, and that with the perturbations and utter ruins of our native country and catholic religion.'' No repudiation of the Jesuit cause could well have been stronger than this declaration that the welfare of the Catholic religion was bound up in the maintenance of James Stuart on the English throne. ''And here,'' continued the Archpriest, ''to the encrease of the horror of the matter, there is made a discovery of a catholic to be privy to this detestable device,'' a device contrary to the commands of the Pope, to his own orders, and to the opinion of the councils and the theologians of the catholic faith. ''Private violent attempts cannot be thought of, much less be aided and maintained by catholics, for it is our parts to make a virtue of necessity, and to make our gain and encrease by patience and prayer.'' He earnestly declared that if any knowledge of the plot had come to him, he would have revealed it to the authorities, and closed with an exhortation to the Catholics, to ''fail not in duty towards God and our King, that our suffering may be our succour, our obedience our ease, and our quiet behaviour may procure a mitigation of our troubles.'' Thus the Gunpowder Plot reconciled the seculars and their legal head, united them in opposition to the Jesuits, and caused them to proclaim in clear and unmistakable fashion their loyalty to their ''native country.'' Blackwell's letter of November 7, taken in conjunction with his circular of the previous July,[1] put into Bancroft's hands exactly what he wanted,—public and irrefutable evidence of the real attitude of the priests towards the Government. By the end of November, the plot had been sufficiently probed to show that the great body of Catholics were guiltless of complicity, while the reports of their reception of the news satisfied the Government that they were at heart loyal. The Gunpowder Plot had thus demonstrated clearly that fundamental fact about which opinions had so long differed, that the English Catholics would, in the hour of national calamity, side with the Protestant sovereign against Catholic powers and forces seeking to injure him.

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[1] Bancroft was one of the first to send Salisbury news that Percy had been seen near Croydon by the landlord of the Inn. Percy asked him, "what newes? who answeringe he had heard none: no, quote he, all London is up in armes. He demanded the way to Kingston: why, said Hoast, you are three miles owt the way thither. No matter quoth he, the waters are owt in the nearer waye. This was told me within this quarter of an hower." Gunpowder Plot Book, no. 7. November 5, 1605. Printed in *Notes and Queries, 2nd Series.* IX, 173.

[2] These papers are practically all in the Gunpowder Plot Books and State Papers. Bancroft was present at an examination of Henry Carew. (Plot Book; no. 157. December 18, 1605.) He signed a council letter of November 19, 1605, (Montacute House MSS. Somerset, *Hist. MSS. Commissioners Report*, I, 58).

[3] The Earl of Northumberland was committed to him. (*Venetian Calendar*, X, no. 445) and probably others. The Earl was examined at Lambeth. Gunpowder Plot Book, nos. 112, 113, 113 A.

[4] See the Gunpowder Plot Book, and Hatfield MSS. 113, f. 39, 61, 66.

[5] Tierney, IV, cxi. Printed from the original. Copy in S. P. Dom. Jac. I, XVI, no. 21.

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[1] Original is in S. P. Dom. Jac. I, XV, no. 13. July 22, 1605, and is printed in Tierney, IV, cx.

There was, however, another subject upon which it was even more essential to have reliable information. What would the Catholics do when the strain of the crisis and the apprehension of unheard-of severity had passed? When quiet had been restored, and the present fear had given place to the old-time confidence in their numerical strength, which would they follow,—the seculars or the Jesuits? Bancroft believed, and was, on the whole, right, that the seculars had gained greatly in strength, but would their new followers obey them, and above all would their followers, old and new, obey the Archpriest, if his commands should be disavowed at Rome? To raise the issue and discover what the laity's attitude really was, Blackwell was induced to give, on November 28, an explicit order "to my reverend brethren, the assistants, and other priests, and to all the Catholics whosoever, within the realm of England."[1] He assured them that violence against the King could not be other "than a most grievous and heinous offence to God, scandalous to the world, utterly unlawful in itself, and against God's express commandment," and instructed his assistants to communicate this to the priests who, in their turn, should inform the laity. That the Pope would approve his course he had no doubt. "In the meantime, by the authority I have, and so much as in me is, I do humbly entreat, and straightly charge and enjoin, all Catholic persons that live under the obedience of mine authority, upon the utter pain that can or may ensue thereby, that none of them dare or do presume to attempt any practice or action, tending in any degree to the hurt or prejudice of the person of our sovereign lord, the king, the prince, nobility, counsellors, or officers of state; but towards them in their several places and degrees, to behave themselves as becomes dutiful subjects and religious catholics to their loyal king, his counsellors and officers, serving in authority under him."

Time alone could tell whether or not the plan would be successful, and meanwhile certain "facts" were made public about the Jesuit attitude toward the plot which greatly increased the Protestant hatred of the Order, which caused good Catholics to exclaim in horror at the Fathers' ideas, and which made the Government as determined to exterminate the Jesuits as it was inclined to tolerate the seculars. Garnet was publicly accused of complicity in the plot, and was executed as a traitor.[1] Whether or not he was guilty, is, after all, an academic inquiry, for there can be little question but that all Protestants and, indeed, a considerable section of the Catholics, firmly believed that he and the Order had abetted Catesby and his friends. That is a fact of the very first historical importance, and is as well-established as the existence of the plot itself. Whoever made the plot, whoever discovered it, whatever its real purport was, the Jesuits shouldered its odium. The accounts made public agreed so well with what the Jesuits were supposed to be ready to do, that all Protestants were more than willing to give them credence. To strengthen this view, the Jesuit sympathisers soon fell to lamenting the failure of the plot, and regarded Garnet as a martyr, not because they believed him innocent of the crime for which he was executed, but because they did not consider it a crime at all.[2] On the whole, except among the more radical Protestants, the Powder Plot discredited the Jesuits, rather than the English Catholics as a body. The prediction of Father Bluet five years earlier, that, if the laity could only comprehend the true nature of the schemes of Robert Parsons, they would never again trust his followers, seemed in great measure to be fulfilled.

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[1] Printed in Tierney, IV, cxii, from Cotton MSS. Titus, 3, vii, 468. Another copy is in Stowe MSS. 156, f. 51 b.

Two powerful factors in the situation were, however, far from taking this view of the case. The King was really frightened at the attempt on his life. He was constitutionally timid; when a child had seen men dirked before his eyes, and had been the object of more than one conspiracy. All his old fears were renewed threefold by the magnitude of the peril he had just escaped; and he was inclined to anything but leniency towards the miscreants who had executed the scheme, and to the adherents of the religion they professed. Then, from the ultra-Protestant and Puritan sections of the population, rose the strenuous "no Popery" cry of the Armada time. It was natural enough. The spirit of conformity taught them that men who disagreed with them fundamentally in religion were dangerous temporal enemies, and knowing that they themselves believed it right to compel Catholics to accept their creed at the point of the sword, they could not believe that the latter would not be ready to do the same, if opportunity offered. They could only explain the continued existence of popery by the lack of sufficiently severe laws. Harsh laws, strictly administered, must be effective, and with this belief, they continued for thirty years and more, to clamour for such enforcement, and to pass even more stringent statutes. Salisbury and Bancroft soon convinced James of the expediency of the opposite policy, and cared little what the Puritans thought. In fact, they included their compromise scheme in the severest penal law yet enacted.

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[1] By far the most important single paper is the "Declaration of Henry Garnet superior of the Jesuites in England, all of his own hand," March 9, 1605-6. Hatfield MSS. 110, f. 30. This has not yet been printed. It is endorsed by Cecil: "This was forbidden by the King to be given in evidence." It is the most conclusive evidence we have of his cognizance of the plot at some early date. Foley has printed in his *Records* from the State Papers a great many of the examinations connected with Garnet's trial.

[2] This is strongly seen in Eudæmon Joannes's *Responsio ad Epistolam. Is: Cas:*, 1611.

Like all other important settlements of these few years, the agreement had its roots in the past. The new oath of allegiance contained its chief provisions, so far as they were made public, and, like the first twelve of the Canons of 1604, and the form of subscription enjoined by Canon Thirty-Six, was the product of the tentative forms of submission offered by Catholic priests during the preceding ten years and more.[1]

The central idea of these forms[2] was a promise of loyalty to the Crown without a renunciation of the spiritual authority of the Pope. According to the early Elizabethan theory, every Catholic, by his belief in such tenets, had, *ipso facto,* proclaimed himself disloyal, and he could only remove this stigma by taking the oath of supremacy, in which he explicitly renounced his allegiance to the Pope. In other words, a man could only become a loyal subject by abjuring his Catholicism. In reality, the law presupposed a condition of affairs which did not exist, for it considered all Catholics potential traitors, when only a minority of the laity were actually disloyal.

The real beginning of the oath of allegiance seems to have been the form of submission demanded between 1579 and 1583, of the Jesuits and priests on trial for treason.[1] The one offered to Campion states that Elizabeth was lawfully Queen and "I and all other of the nation of England are her liege subiectes," and owe her allegiance "notwithstanding any acte or sentence yt any Pope or other person, Church or bodie hath done or giuen or can doe or giue." It declared the Pope's excommunication "false and erronious and of noe validitie;" and all invasions treason, even if commanded by the Pope. This form seems to have been used frequently by the Government in its examination of priests, and naturally enough became, in later years, the basis of an attempt to reach some common understanding. But the first public announcement by the Government of a willingness to accept some test of temporal loyalty, appears in the form of submission provided in the Act of 1593.[2] Instead of abjuring the realm and going into perpetual exile, the convicted recusant could declare that the Queen's Government was godly and lawful, and that he repented his breach of the "godly laws and statutes" of the realm. Then, he testified that "no other person hath or ought to have any power or authority over her Majesty," and concluded with a protestation "without any dissimulation" or dispensation, of his willingness to obey the laws in the future and defend them to the uttermost. The Pope was not mentioned in any way, and no renunciation of his power was demanded. Compared to the oath of supremacy, this form was mild and lenient, but, like the more famous oath, it was not to be taken by every one, and its acceptance did not relieve the individual recusant from the penalty of other laws. Nevertheless, this was perhaps the first step toward the provision of some definite test for those Catholics who were loyal to the Queen but who were willing to renounce neither their faith nor their country.[3]

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[1] Memorial to Bellarmine from Parsons, May 18, 1606: "Un giuramento proposto dal parlamento alli cattólici d'Inghilterra . . . che questo giuramento pernicioso è státo cavato dalla dottrina delli preti appellanti, nelli libri lore stampati, e fù presentato al detto santo officio per duoi procuratori del detto arciprete, nel anno 1602, quando stettero qui in Roma, et hebbero promessa che la detta dottrina sarebba stato condennata." *Tierney,* IV, cxxxv

[2] These have been printed in full in the Appendix.

As soon as the split began to appear in the Catholic ranks, between the Jesuits and the seculars, forms of an oath were suggested by which the good Catholics might offer their temporal allegiance to the Crown. In 1597, the English refugees on the Continent entertained some ideas of binding themselves by oath to oppose all violent proceedings under the guise of religion;[1] at the examinations of Father Walpole in 1598 a series of points were raised again and again, which we find afterward in the oaths of allegiance of James's reign;[2] in 1601, Father Cecil told Mush, "I write to Mr. Bluet of an oath, which Mr. Hill wold have us sende yow (in Europe) and tender here to the (English) embassador."[3] Early in 1602, Cecil wrote to Watson, that "we have cenceyved here an oath of obedyence,"[4] while Dr. Ely told Cecil in a letter written in August, 1602, that the priests and Catholics were ready to agree to a series of propositions which, in many ways, resemble the later oaths.[5] The idea of an oath of allegiance was then old enough in 1606, and its form had been developed by the priests and laity themselves. Bancroft's tact and diplomacy, however, shaped the final oath, and secured its acceptance by the Government, and, in the end, by most sections of the Catholic party.

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[1] A form of submission for the use of Catholics in the Inns or Court is in Additional MSS. 28571, f. 70.

[2] 35 Elizabeth. c. 1, s. V.

[3] There is evidence in the Council Register and elsewhere, to show that a distinction obtained as early as 1586 between the "peaceable" Catholic laity, who merely clung to their old creed, and the "seditious" laity who proselytised. But the government seems, however, to have treated all priests as "seditious" until at least 1593, and probably till 1600.

The first definite forms which have come down to us, date from the return of the Appellants from Rome in the fall and winter of 1602. In November and December, some twenty or more seculars hotly debated an oath of allegiance, and two of the proposed forms still survive. In the first, the priests acknowledged Elizabeth as their lawful sovereign, promised to render her due obedience, and agreed to hold no intelligence with any one whatsoever, prince or prelate, contrary to her welfare.. Another longer form, bearing the significant title, "An Oathe of Allegiance," added to the foregoing a declaration that they recognised Elizabeth as rightful Queen, any teachings of any foreign power to the contrary notwithstanding. If the Pope himself were to deprive her of her Crown, or absolve her subjects from their allegiance, or invade England to reinstate the Catholic religion, they swore that they would remain true to her and fight in defence of her right.

The language of this oath was explicit and free from ambiguous words, and perhaps for that reason, the majority of the Appellants refused to assent to it. After considerable difficulty in agreeing upon any form at all (for nearly every priest seems to have preferred his own peculiar scheme), thirteen priests did sign and present to Bancroft, on January 31, 1602-3, a new oath of submission. They recognised that the Queen had as much authority as her predecessors had possessed, and declared themselves ready to obey her as far as any Catholic priests were bound to obey their temporal prince in any country of Europe, defining their obligations, however, as extending merely to civil obedience to the laws and magistrates in civil causes. That all attempts to change the religion of England by force were detestable, they thought no one would deny, and they were lavish in their protestations of support in case of foreign invasion, and in their promises to reveal and resist all conspiracies of which they might learn. They even went so far as to agree that, if the Pope excommunicated all Englishmen who refused to aid an invading army, they would not consider themselves bound to obey his mandate. Despite the somewhat doubtful wording of certain clauses, these were very great concessions, but their final reservation made the whole oath unacceptable. Inasmuch as they had made so full a recognition of the Queen's claims upon them, they hoped she would allow them to express in the same public manner, their undiminished loyalty to the Pope, their spiritual father, and their determination to lose their lives rather than "infringe the authority of Christe's catholicke church." Practically this form of January 31 contained the sense of the earlier one just referred to, rephrased in rambling, equivocal sentences, with the addition of a full recognition of the papal authority. Naturally, if such papal claims were recognised, and, if the Queen possessed no more authority than her predecessors, whatever the priests might understand that to be, the subscriber swore obedience to two contradictory things, if he could be considered as having recognised the Queen's supremacy at all. Indeed, this oath was not a modification of the oath of supremacy: it practically annulled it, and also failed to substitute for it any clear and uncompromising agreement of temporal loyalty.

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[1] Harry Constable to Essex. Hatfield MSS. 175, f. 3, $\frac{\text{February 28}}{\text{March 10}}$, $\frac{1596}{1597}$

[2] These can be followed most easily in A. Jessopp's excellent volume *One Generation of a Norfolk House.* They are also printed at length in Challoner's *Missionary Priestes.* I.

[3] *Archpriest Controversy.* Camden Society, II, 180.

[4] *Ibid.* II, 183.

[5] *Ibid.* II, 195, ff.

Then, with the death of the Queen, the Catholic hopes soared high. Under the new King, there were no more whispers of an attempt by a foreign prince to change the religion of the kingdom by force, no more talk of excommunicating all who did not join the invaders. The deputations of Catholic laity and clergy proffered humble congratulations on the King's most auspicious accession, made hearty protestations of loyalty, and reiterated their explicit offers to take some "corporal" oath of allegiance. Instead of the old complaints, we find, in their petitions, dignified and temperate requests to "license the practice of our religion in private houses without molestation to priest or lay person for the same."[1] Thus the old forms were cast aside and the negotiations then going on resulted in a definite form of submission of a totally different stamp. A great deal has been written by both Catholics and Protestants on the enforcement of the penal laws, and of the terrorising of priests and the like in 1604, yet we find a party of priests in prison in July, 1604, complaining that they should have been released, because they had signed, in the April preceding, a form in which they, speaking as members of the civil body politic, recognised James as supreme head of that civil body, without dependence on any foreign prince, and offered him the same allegiance as their predecessors gave to former Kings of England.[2] Not a word was said about the Pope, not a word testified to their standing as ecclesiastics condemned to death by the laws of the realm. In fact, the seculars were by no means cowed or abused, and expected shortly to carry things with a high hand. Practically all they offered was the first section of the oath submitted by the thirteen priests, in January, 1602-03.

If this was what the priests offered, what was it the Government expected? In a paper drawn up by Bancroft himself for the examination of priests in the summer of 1604, we find the ideas at which the Government was now aiming.[3] Here, too, we see a recognition of the influence of circumstances. In a long and involved style, full of repetitions and circumlocutions to prevent evasion, the priest was asked to declare that people erred who thought that no one could be King of England without the Pope's consent; that a Catholic ought not to obey a King whom the Pope adjudged a heretic; that, because of the King's heresy, the Pope could discharge subjects from their allegiance, or order them to commit violence. The new note lies in the abjuration of certain powers which the Pope claimed in the case of heretic princes. The removal of the fear of armed invasion had caused the Government to substitute in the oath for the old promise to oppose a foreign army, the denial of a right claimed by the popes of deposing heretic Kings, discharging subjects from their allegiance and licensing revolt against them. For years, James had been particularly afraid that the Pope would exercise these prerogatives against him when he came to the English throne, and that the Catholics would then be strong enough to hold the balance of power. To this end,[1] he had begun his bungling negotiations in 1599, while still King of Scotland. For this, he had played with the papal nuncio at Brussels, during the summer and fall of 1603, and spasmodically during the following year; the Pope was willing enough to correspond, though he had no intention of granting such requests, and James soon gave up the idea of negotiating directly with Rome. Therefore, he lent a willing ear to Bancroft's information that the priests had already been offering for some time to renounce those very powers of the Pope.

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[1] *Supplication to the King's most excellent Majesty, . . .* 1604. The substance of the tract has been reprinted in *Tierney*, IV, lxxxii. Rivers wrote at the time to Parsons that it was written by Colleton, and it very likely was issued with the general approval of the secular leaders. The evidence of this is, however, of the slightest. Foley, *Records*, I, 61.

[2] The first few words of the oath mean that regular as well as secular clergy offered it. Were these Jesuits or Benedictines?

[3] Petyt MSS. 538. 38, f. 186. Hitherto unpublished.

We have, therefore, these two threads, the explicit offers of the priests, and the demands of the Government: the former ready to swear allegiance to the King but unwilling to avow their disbelief in any of the papal powers; the latter insisting upon the unqualified renunciation of the papal prerogatives, as far as they might openly affect the relation of the English Catholics to the King, but not prepared to urge strongly that general disavowal of the Pope's spiritual powers, which the oath of supremacy required. In truth, so long as the Government maintained the legal position taken in 1559, that the King was supreme governor, and that the papal headship had been rightfully abrogated, it could do no less than insist that the Pope had no power whatever to influence the relations between the King and his subjects.

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[1] This is a point which has been much debated. It is set as nearly at rest as it is likely it ever will be, by a letter of the Jesuit Wm. Creighton, to Sir Andrew Murray. This says that the object of James's negotiations with the Pope was "that they suld not excommunicat his Maieste or absolue his subiectes from his obedience." . . . "It was not gevin to understand to the Pope that the Kingis Maiestie was in any disposition ether to come, or favour the Catholick religioun, for the contrair was conteyned expreslie in the Letteris . . . saying that albeit he remaned constant in that religioun in the which he was nurisched from his cradle, yet he wold not be enimye and persecutour of the Catholikes, so long as thay suld remaine faithfull and obedient subiectes to him." Botfield *Original Letters*, I, 181: $\frac{\text{January 17, 1608.}}{\text{January 27, 1609.}}$

In pursuance of this theory, Bancroft drew up, in 1605, a form on which to examine priests and recusants, which would demonstrate how far they were really willing to make such concessions as the King desired.[1] First came a clear recognition that James was the lawful and rightful sovereign, and that those before whom they took the oath were lawful magistrates. Then followed, in brief but precise phrases an acknowledgement that the Pope could not depose the King, nor discharge his subjects from their allegiance, nor authorise foreign invasion, nor license any tumult or revolt or any attempt against the King's person or estate. In conclusion, the Catholic declared that he made the statement on the true faith of a Christian Catholic, without mental evasion or equivocation of any description. This, however, was far more extreme than anything which the Catholics themselves had up to that time offered and, although some priests may have taken it in 1605, it was not espoused by any Catholic faction as a whole.

Then came the discovery of the Gunpowder Plot, and in Blackwell's letter, issued two days later, we find the first public tender to the Government by the official head of the secular organisation of those points which the priests had so often offered in private submissions. It expressed great horror of the plot, denounced the theory of conversion by force, and discountenanced any violence against the King's person or estate. But, far from rejecting the Pope's authority, Blackwell openly declared that the Pope and the Catholic theologians, with one accord, believed in those conclusions, and he issued his later order against violence, with the express statement that the Pope would undoubtedly approve of it. Although the Archpriest's letter spelt defiance of the Jesuits, and although its consequences were highly important, its detailed statements were more conservative than any which the seculars had offered to the Government. Nevertheless, the bare fact that the letter had been published at such a crisis, was the greatest concession the priests had as yet made. It was done, however, at the expense of the Jesuits, not of the Pope.

The discovery of Garnet's complicity in the treason, and the consequent increase of the popular feeling against the Catholics, changed the minds of the priests once more. There can be little doubt that the final form of the oath of allegiance was prepared by Bancroft, after consultation with the secular leaders,[1] and that they accepted it themselves, and gave assurances of the readiness of Catholics in general to take it, before the oath was ever adopted by Parliament.

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[1] Petyt MSS. 538, 38, f. 212. Hitherto unpublished.

The Oath, as finally enacted, was a verbatim repetition of Bancroft's form of 1605, with the addition of the substance of the priests' own submissions. It had, therefore, two well-defined parts, the one theoretical and the other practical: first, a declaration that the Pope did not possess certain powers, which he claimed to exercise against heretic sovereigns; and secondly, an agreement that, if the Pope did exercise those prerogatives, his commands ought to be disobeyed. To these was added, first, an acknowledgement that no power whatsoever could dispense with the oath, or discharge a man from his obligations; and second, a long declaration from the form of 1605, that the Catholics took the oath without mental reservation of any sort. But it therefore required no affirmation of James's spiritual headship, and no general adjuration of the Pope's spiritual power; and was as purely a temporal oath as could be devised. With this idea the King himself was in full accord, for in his "Apologie" for the oath, he said that the oath, "only medling with the ciuill obedience of Subiectes to their Soueraigne, in meere temporall causes," does not "concerne in any case the Pope's Supremacie in Spirituall Causes." "Can there be one word found in all that Oath, tending or sounding to matter of religion? Doeth he that taketh it, promise there to beleeue, or not to beleeue any article of Religion? Or doeth hee so much as name a trew or false Church there? And as for Saint Peter's Primacie, I know of no Apostles name that is therein named." "As the Oath of supremacie was deuised for putting a difference between Papists and them of our profession, so was this Oath, which hee would seeme to impugne, ordained for making a difference betweene the ciuilly obedient Papists and the peruerse disciples of the Powder Treason."[1] The oath of allegiance of 1606 was therefore no innovation. All its ideas had long been familiar, and had appeared and reappeared in various guises ever since 1597. Far from being a piece of intentional and unexampled severity, it was really a compromise.

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[1] Mr. Taunton, in his *Jesuits in England*, 351, says, without quoting his authority, that Bancroft drew up the oath at the suggestion, or with the advice, of a renegade Jesuit, Christopher Perkins. On the face of it, this seems unlikely; it contradicts all we know of Bancroft's methods of dealing in important matters: Perkins was not one of the secular leaders; and it contradicts the fact that our best evidence shows that the oath of allegiance was a growth, and was not made at any one time by any one man. Moreover, the substance of it was Bancroft's form of 1605.

The effect of the Gunpowder treason, moreover, far from provoking a persecution of the Catholics, and far from rupturing all the relations so carefully fostered by Bancroft, consummated the alliance of the Government and the seculars, by influencing the priests to accept the minimum demands of the State. Instead of being the signal for new oppression, the oath of allegiance was to be the open sesame to toleration, the test of loyalty, the sieve that should winnow the wheat from the chaff. To take it was to be admitted to membership in the new sodality of Catholic Englishmen, a secular organisation of loyal Catholics in pursuit of purely spiritual ends, to be administered in the furtherance of domestic peace and of mutual trust between men of different creeds.

But there still stood on the statute book the penal laws of Elizabeth, and the Parliament of 1606 added others which were even more stringent. Here came into play the Puritan horror of Catholicism, the Anti-Spanish, Anti-Jesuit feeling inherited from the Armada times. In Parliament, this party was in the majority and passed the new laws and reaffirmed the old with a determination to crush the Papists at last, and either to exterminate them or expel them from the new Canaan. It was the spirit of conformity, or, as we call it to-day, the spirit of persecution. When the Puritan demanded the banishment of the Catholic, he was guilty of that same intolerance, and that same persecution of which he complained so bitterly, when the Church deprived him of his benefice for his own nonconformity. According to our standards the one is as worthy of reprobation as is the other. Certainly the record of episcopal "persecution" is far shorter, far less fierce, and far less merciless, than the long and unbroken series of Puritan demands in and out of Parliament, for the extirpation of the Catholics.

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[1] *Works of James I*, (1616) 263, 264, 265, 269. On page 292 James declared that he had forced the House of Commons to strike out of the oath a clause stating that the Pope had no power to excommunicate him. The proclamation of 1610 stated that "howsoever odious it was to the Pope, yet was it only devised as an act of great favour and clemency towards so many of our subjects, who, though blinded with the superstition of popery, yet carried a dutiful heart towards our obedience: for hereby was there a separation and distinction made between that sort of papists and the other pernicious sort." (Tierney, IV, clxxxvii.) The Venetian Ambassador reported, $\frac{\text{January 28, 1607}}{\text{February 7, 1608}}$ that James "professes himself amazed that this oath should be prohibited when it is really so much milder than the oath exacted by his predecessors. Thus one party is trying to make the archpriest recede from his position, and the other to confirm him in it." *Venetian Calendar*, XI, no. 168.

The new laws provided that the recusants should not only attend church, but receive the communion yearly according to the Anglican rite. Where the act of 1587 had allowed the Crown to seize two-thirds of the offenders' lands when the fine of £20 was not paid, the King might now take the two-thirds at will. The punishment of death for conversion to Romanism was extended to the convert as well as to the agent of his relapse from grace. The other Act of this same year offered large rewards for information of recusancy: banished all Papists from the Court and from the city of London, except under special conditions; excluded them from the medical and legal professions, from the army and navy, from all minor public offices and from trustee- or guardianship. All the property of recusants educated abroad devolved at once upon the Protestant next to kin; arms and munitions of war, in the possession of the Catholics, were at once to be confiscated; and the right to search their houses for popish relics and books was freely accorded to the justices of the peace. Catholic wives of Protestant husbands were severely penalized.

These exceedingly harsh provisions were probably never put into full execution; and it is probable, though not certain, that the Government never expected or intended that they should be.[1] It was well to enact them to satisfy and silence the Protestant fanatics by a pious show of zeal. It was equally well to have them on the statute books to use if the situation should, at any time, demand rigorous measures. In fact, during the whole reign of James, the penal laws were used to threaten and coerce the refractory, who refused the oath of allegiance and were not amenable to persuasion. Those Catholics who would take the oath of allegiance and accept the leadership of the secular priests, need not be troubled with fines and penalties, but all the Jesuits and their supporters, all foreign plotters and their books and letters, all those who stiffly refused the governmental overtures, these might well feel the weight of the law, from time to time, not so much to exterminate them, as to coerce them into the acceptance of the new compromise. Just so long as every priest in England was liable to death at the pleasure of the State, just so long as the whole Catholic organisation existed on suffrance without legal right, so long would the leaders be compelled to take the Bishop of London, or some other high official, into their confidence, reveal to him their plans, secure his consent and assistance to their consummation, and, through him, obtain redress for their grievances. The existence of the penal laws, not their execution, was the guarantee for the loyalty of the secular Catholics to the State. The new settlement of 1606 was, therefore, Janus-like: the Judges would go down to the assizes, bearing in one hand the oath of allegiance, and in the other the sword of the new penalties, and the Catholics should choose. But before we attempt to trace the further history of this new compact between Bancroft and the seculars against Rome and the Jesuits, it will be necessary for us to turn our attention to certain other proceedings in this Parliament and in the Convocation which met at the same time.

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[1] "Yet so farre hath both my heart and gouernment bene from any bitternes, as almost neuer one of those sharpe additions to the former Lawes haue euer yet bene put in execution." These words were written in 1609. *Works of James I*, (1616), 292.

CHAPTER IV

PARLIAMENTARY OPPOSITION TO ECCLESIASTICAL REFORM

The manifesto issued by the Puritan leaders in August, 1604, after the prorogation of Parliament, urged all Puritans to refuse the bishops' demands on the ground that "To subscribe weare iniuriously to discourage and reproache the religious knightes and gentlemen of the parliament, who uppon good grownde haue labored to remoue it. It would prevent them of the good which they may doe in this behalf the next Session of the Parliament. It would animate the Busshopps to enforme the Kinge that it was but a fancy of his lower house to stand soe much uppon subscription, for the ministers themselues haue yealded sauing a verie fewe."[1] Yet, despite their efforts, many had conformed and subscribed, a number had been deprived, more had been suspended and admonished, and now, as the Parliament assembled for its next session, on that memorable fifth of November, 1605, the Puritan clergy and laity eagerly awaited "the good" it should do for the cause, and the demonstration to King and bishops that the House of Commons was stirred by deeper motives than "fancy" and "singularitie." With a somewhat different sort of eagerness, Bancroft also looked forward to the session. He anticipated an attempt to call the bishops to account for their conduct during the past year and a half, and he expected to find the House ready to interfere in ecclesiastical affairs, and to initiate legislation on religious topics in the face of the royal prohibition and the vote of Convocation in the previous session.[2] Its attitude would indicate, he felt, the opinions of the real supporters of the Puritan movement, of the men whose adherence kept the schemes for the installation of the Discipline alive, and whose money and encouragement maintained the nonconforming ministers. As he knew very well, the pressure of poverty and of public opinion would very soon have compelled the vast majority of the Puritans to capitulate, had they not been able to take refuge, with their families, at the houses of the gentry, where hunger, cold, and the Archbishop's pursuivants ceased to exert "their wholesome pressure," as he would have phrased it. Bancroft had conquered the underlings, and now the virtual leaders themselves had come forward to carry on the battle of the Presbytery against Episcopacy.

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[1] Additional MSS. 28571, f. 205.

[2] See Book II, Chapter III.

The situation in November, 1605, differed somewhat from that of the preceding year, but, in nearly every instance, succeeding events had only served still more to embitter the contending parties. The Knightleys, Mountagus, and the Northamptonshire gentlemen, had not improved their previous bad reputation at Court by the presentation of their petition of February, 1604-5 in favour of the deprived ministers. Sir Edwin Sandys had also attained such notoriety that his books were burnt by order of the High Commission in Paul's Churchyard, shortly before the opening of Parliament.[1] Kingsmill,[2] Wroth, Rich, Fuller, and the rest, had not been backward in abetting the Puritan preachers of their own districts in their resistance to the Church, and the opposition, which they, one and all, had shown in 1604, on constitutional and legal grounds, to the King and his prerogative, had sown discord and suspicion between them and the royal government. The suspicion and wrath were mutual, for the Puritan gentry suspected James and Bancroft of schemes to aggrandise the Church at the expense of the laity.

The events, which had transpired since the prorogation of the last Parliament, increased the Puritan resentment. The Canons, despite the protests of the House of Commons, had been ratified by the King; the ministers had been deprived in the face of petitions and remonstrances, and it counted for nothing that the number, who had actually been deprived, were few, their learning small, and their conduct reprehensible; the administration of the Church had been remodelled and made more efficient than ever before. Worst of all, the Gunpowder Plot had resulted, not in a severe persecution of the Papists, but in an even more intimate understanding between the Government and the secular priests. Instead of being hanged, the priests were conferring with the Bishop of London; instead of being fined, the recusants were practically tolerated;

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[1] S. P. Dom. Jac. I, XVI, no. 23. November 7, 1605.

[2] A great landowner in Hampshire, the patron of Dr. Feilde and others.

and, as the weeks slipped by, all the Puritan fears of Popery were confirmed threefold. On the other hand, the gentry's confidence was increased by the consciousness that they had gained a powerful ally in the common lawyers. The archbishop's scheme for remodelling the ecclesiastical fabric by administrative orders and through the decisions of his courts, had received a severe check from the readiness of the common law judges to issue prohibitions, and, what was more, to sustain them. Had not the clergy acknowledged the serious obstacle thus put in their way, by the complaint against the common law courts which the Archbishop had just presented to the Privy Council? Had he not as much as said that, if the existing practice in regard to prohibitions could be maintained, the administration of the Church would be wrecked? The Puritans intended to lose no opportunity of strengthening the hands of the common lawyers. The contest between the Puritans and the Church was, therefore, not ended, but was resumed with new vigour, new courage, and a new purpose.

During the last fifteen months, the Puritan ministers had not been idle and had produced at least a dozen pamphlets, full of legal and theological arguments, which furnished their lay friends ample material for parliamentary speeches. The Lincolnshire and Devonshire ministers printed long defences of their conduct. William Bradshaw published at least three books, *A Protestation of the King's Supremacy, made in the name of the afflicted ministers*, *A Proposition concerning Kneeling in the very act of Receiving,* and, most significant of all, *A Treatise of the Nature and Use of Things Indifferent tending to prove that the Ceremonies in present controuersie are . . . neither in Nature or Use Indifferent* Then came *Twelve Arguments* to prove the ceremonies "unlawful," and *A Short Dialogue* by Samuel Hieron, declaring that the arguments used to justify them had previously been employed by the Papists to defend their superstitions. Richard Bernard (?) issued a *Dissuasion from the way of Separation;* Henoch Clapham wrote *An Epistle to such as be distracted in mynd in respect of the present styrres in the Church,* while a pamphlet entitled *Certaine Demandes with their Groundes drawne out of holy writ,* demanded from the archbishop and five bishops a "true, plaine, direct, honest, and resolute answere." Many of these hinted that the Canons of 1604 were illegal, because they had not been confirmed by Parliament, and the point had been included among those sent out by the leaders in the summer and fall of 1604. This idea was now fully developed in the tract, *Certain considerations drawne from the Canons of the last sinod,* and was answered in an official publication, dedicated to Bancroft, written by Francis Mason. B. D.—*The Authoritie of the Church in making Canons and Constitutions concerning things indifferent and the obedience thereto required.* The point was continually alluded to during the years 1604 and 1605 and assumed prominence early in the session of 1606 and 1607.

Like the Puritan attitude toward subscription, the argument was a development and a consequence of the idea which had survived from the old Teutonic law, that no man could be bound by anything to which he had not personally assented, except to the tribal or national law into which he was born. Therefore, inasmuch as the laity were not represented in Convocation at all, the Catholics and the Puritan laymen claimed that the Canons were not binding upon them. The Puritan ministers felt that they too were not represented in Convocation, that the bishops and their underlings were "anti-christian, Baal's priests," without proper authority to legislate for the Church at all; and they too rejected the Canons as illegal. Pressed, however, by political and ecclesiastical forces to obey, they agreed to accept the Canons, if they should be confirmed by Parliament, hoping that their lay friends in the House of Commons would effectually oppose that confirmation. According to the legal views of that date, however, confirmation was superfluous.

Henry VIII, Elizabeth, and James all considered that the assent of the laity to ecclesiastical legislation had been given, once for all, by the assent of Parliament to the legislation of Henry VIII; that right of the laity to assent to Canons had then been delegated for all future time to King and Convocation.

The twelve judges, in February, 1604-5, declared in the Star Chamber advisedly, before a dignified concourse of lawyers, nobles, gentry, and ecclesiastics, that "They *held it clear* that the King *without Parliament* might make orders and constitutions for the Government of the clergie." Although nothing was said here about the laity (probably because the authority of the Canons over the laity was not then in question), the Canons of 1604 seem to have been considered, till at least 1640, by the common law judges, as well as by the ecclesiastics and statesmen, to be legally binding upon both clergy and laity.[1] Later legal opinion was to the contrary, and for two centuries it has been said by judges, chiefly in *obiter dicta,* that Canons which had not been confirmed by Parliament, would not bind the laity; and that the Canons of 1604, being still unconfirmed, were legally effective only on the clergy. The growth of the power of Parliament, the assumption by the temporal courts of most of the lay offences covered by the Canons and the ecclesiastical law, the complete denial of the right of the clergy to hold jurisdiction over the laity at all, made such a legal dictum necessary and inevitable. Such, however, was not the best opinion in 1606.

The consideration of the Gunpowder Plot, and the discussion of the measures to be employed for the repression of the Catholics—in all of which Bancroft was very active—consumed so much time and so engrossed the attention of both Houses of Parliament, that the Puritans and Church matters proper were not reached till the month of January, 1606, was far spent. On January 21, Bancroft[2] secured the appointment, by the Lords, of a committee to "consider how the Laws are already in Force, that tend to the Preservation of Religion . . . and what Defects are in the execution of them or what New Laws may be thought needful." This roused the House of Commons to action, and on the following day, Mr. Wentworth lamented the scandal caused by the presence of ignorant and nonresident clergymen, and declared that "an able ministry, learned (and) resident" was a necessity. A great committee was appointed to confer with the Lords, and many letters were written "into the country to understand the Grievances."

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[1] There is abundant positive, as well as negative, evidence of this in most of the diocesan registries, and in many of the Law Reports. Papers in Coke's XII and XIII *Reports* and II, III, and IV *Institutes* are not the best evidence in this connection.

[2] A Latin copy of the summons of Bancroft to Parliament, as Archbishop is in Cotton MSS. Cleopatra, F, II, f. 43. In Stowe MSS. 168, f. 320-323; 362, are notes of debates in this session which are interesting, but not particularly valuable. Page references to the *Journals* of Lords and Commons have not been given, because the dates indicate even better the whereabouts of the entry. As with the Parliament of 1604, there are a large number of manuscript bills, petitions, etc., which may refer to this session, but which cannot be dated with sufficient certainty to justify acceptance by the critical. These are in the State Papers; Cotton MSS. Cleopatra, F, II; and in the *Report on the House of Lords MSS.*

No response was received from the latter, and as the Lords were slow to act, the members of the House brought in bills of their own to remedy the difficulties. On February 8, Sir Edwin Sandys brought forward again that well-known measure, once more revised and revamped, the bill "for the better establishing of true Religion," which, with the bills introduced toward the end of the month, against nonresidence, against pluralities, "for the more due execution of Ecclesiasticall government" contained the scheme for the introduction of Presbyterianism. Sir Francis Hastings also championed a bill for the restoration of the deprived ministers, which, with all the others, was duly read and committed. From the supporters of the Government in the House came a bill for the "Establishing of true Religion" which was "stayed from the Question." Matters then drifted amicably along till the middle of March, and, as might be expected, Bancroft was glad to postpone, as long as possible, the struggle which he realised was inevitable between the House of Commons and the bishops.

On March 15th, Fuller, Morrice, and some of the more radical of the Puritan sympathisers, "much urged" the grievances of the deprived ministers. Sir Richard Spenser, on the other hand, complained no less loudly of the "self-weening Opinion of some Ministers," and maintained that matters of discipline were to be changed by those in authority according to times and places. In no case were the ceremonies, agreed upon by a general convocation, to be subject to the judgment of private men. Sir Francis Hastings suggested a petition to the King, but wished the House to disavow any intention of innovation or of introducing the Presbytery, and was supported by Mr. Wentworth, who described the poverty and sufferings of the ministers since their deprivation. Both were, however, reminded by Sir George Moore that the issue in debate was not the extent of the ministers' sufferings, but whether their sufferings were not the necessary consequence of their disobedience to the clear law of the Church. The only point left to discuss, declared Moore, was the legality of the deprivation. Nevertheless, the deprivation of the ministers was voted a "grievnace." Two days later, Fuller produced the grievances against the High Commission, wished the numerous diocesan commissions revoked and the maintenance thereafter of only two general commissions,—one at London, and the other at York, as had been proposed at the Hampton Court Conference. "That is no fit grievance to be presented," declared Sir Daniel Dun, somewhat warmly, as may be imagined, for he was one of the civilians closely associated with Bancroft, besides being himself a member of the Commission. Assisted by Sir John Bennett, later Judge of the Prerogative Court, he succeeded in recommitting the clause. But all in vain, for when the grievances were reported to the House on April 5, the strenuous efforts of the civilians to strike out such phrases as "the unlimited Authority of high commissions," were futile, and the grievances were accepted substantially as reported.

A message was then sent to the Lords, requesting a conference on the four points: the silencing of ministers, the multiplicity of ecclesiastical commissions, citation, and excommunication. The Lords had just begun to discuss in committee a lengthy proposal of Bancroft's regarding excommunication for small causes and the substitution of some other process for it.[1] From the King had come a message stating that he wished the practice reformed, but desired at the same time to uphold the ecclesiastical jurisdiction "in all respects as is fit." The Upper House was therefore busy, and its members were so nonplussed when they saw the grievances in which the Commons wished them to join, that they postponed immediate action. Two days later, by way of partially appeasing the impatience of the Commons, two of the hostile bills already sent up were read a first time, but a long debate on the grievances produced no result. A committee of which Bancroft was chairman discussed the topic and reported, but brought the Lords no nearer a decision. A strong party, of whom Bancroft seems to have been the leader, desired to refuse concurrence point blank, on the ground that the House of Commons had no right to take cognisance of ecclesiastical affairs at all,[2] but they were finally won over to the proposal of a conference, with a committee from the Lower House. The Commons, well understanding the issue and the significance of the delay by the Lords, assented to the conference and then, as an earnest of their own unchangeable hostility to the Church, proceeded to read, a second time, the bill against scandalous and unworthy ministers.

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[1] See a manuscript journal on the action of the House of Lords, during these months, in Harleian MSS. 767, f. 72 b, et seq.

[2] The evidence on the point is vague, fragmentary, and confusing.

On April 14, the Committee met: the bishops listened to the speeches of the delegates of the Commons, and Bancroft said, on behalf of his colleagues, that the matter was one of great importance, that time was needed to deliberate upon it, and that he would report to the Upper House, which would in due time send a suitable reply. Three days later, on April 17, while the Puritan ministers in and about London fasted and prayed for a favourable outcome, the committees met again at the Painted Chamber, and listened to the "four points very curiously and learnedly handled by four apostles of the Lower House."[1] The Archbishop's reply was reported on April 29 by Sir Francis Bacon to a very thin house. Bancroft narrated the proceedings against the ministers, told of their "factious" behaviour, descanted on the eleven books which they had published and the numerous petitions of various types which had been presented, and concluded that they had been by no means blameless. The bishops had required from them nothing new or unusual, for subscription was insisted upon in every reformed church in Europe,[2] and nowhere so stringently as at Geneva. Nor was the subscription in itself objectionable: it was a sort of negative protestation, which did not imply that the subscriber professed his individual assent or agreement to the Thirty-Nine Articles and Book of Common Prayer. And, if it did, it was a public form taken for the good of the Church as a whole, which a man ought to take and still believe individually whatever he chose. At the worst, there was little superstition in the ceremonies to which they subscribed: kneeling was simply a manifestation of reverence to Christ, the sign of the cross in baptism was not of the essence of the Sacrament, and the surplice was only a "coat with four elbows." He saw, therefore, no reason for continuing connivance at such nonconformity but thought the law might very well be enforced. The Bishop of Winchester spoke for the High Commission and the Bishop of Bath and Wells defended the practice of citations as observed in the ecclesiastical courts, while the Bishop of St. David's justified excommunication. In the four bishops' speeches, declared Bacon, were "strength, gravity, quickness and sincerity."

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[1] S. P. Dom. Jac. I, XX, no. 36. Carleton to Chamberlain.

[2] Moriz Ritter, *Deutsche Geschichte in Zeitalter der Gegenreformation und des Dreissigjährigen Krieges*, II, passim. (Stuttgart, 1895.) Also Rymer, *Foedera*, XVI, 39, for a Dutch form.

A fortnight later, on May 1, the Commons replied. Henry Yelverton, the spokesman of the committee, was a lawyer and member for Northampton, a borough whose Presbyterian practices had been notorious for thirty years.[1] He said that he hoped "the scattering suspicion layed upon a few" would not "be fastened upon all"; he protested that the Commons desired neither Presbytery nor parity; excluded from the benefit of the proposed petition all ministers led "by heate of humour," and, waiving the benefit of law, craved mercy for them on the ground that "many things lawful were not expedient." He interceded, he said, for the pious and peaceful ministers whom he and his colleagues admitted were not "the only and principall men, but acknowledged that the Church is furnished with many other verie lerned and sufficient men." The admirable candor and moderation of this request took Bancroft by surprise. He saw, among the members of the committee before him, many a gentleman whom he knew had supported the old Classis movement and who had either written or spoken or petitioned more than once in favour of the Book of Discipline. The speaker, Yelverton, was at that moment the representative of a borough whose Mayor and Corporation had scarcely a year previous supported a radical Disciplinarian. He said, at last, that he could not understand it, and could hardly believe his ears. They disclaimed parity and Presbytery, and yet were defending men who, to his own certain knowledge, aimed at nothing else. They disowned all who displayed "heate or humour" and yet, in many cases, the men deprived had given ample evidence of both. If those who declared the present government of the Church anti-christian were not schismatics, he did not understand the use of the word. In acknowledging that the deprived and suspended ministers were not the only good men in the Church, they were only just, for they must in sooth, know very many better. "Comparisons becom your Lordship, but not us," returned Yelverton. "We love there giftes but not there faultes." As to the law, you must be conscious, went on the Archbishop, that the whole course of the law and the opinions of all the judges are flatly contrary to your contention. "We desired those men might be protected by mercy, not by law," replied Yelverton, who had not raised the point of law because it rested with the bishops. He then expounded at length the point on which Burgess and others had already fought stoutly, that the ministers could only be forced to subscribe by the statute of 13 Elizabeth c. 12, which required it only on induction, and compelled no one already in office to subscribe. If the ministers had been inducted since 1571 without subscribing, that was the Bishop's fault, he declared, and the difficulty could not now be legally remedied by exacting subscription universally. Moreover, the law ordered men to subscribe only to such articles of the Thirty-Nine as concerned faith and the sacraments, and nothing was said about subscription to the Book of Common Prayer at all. Nine men in Oxfordshire and one in Warwickshire had been illegally deprived "for not subscribing to the Thirty-sixth Canon, because that Canon giveth no such subscription or punishment. We said generally for all, that all there (i. e. the bishops') procedings since the last Session of Parliament are not warranted by the Law," for the bishops issued their processes under their own seals instead of under the King's. An Act of Edward VI (1 Edward VI. c. 2) had directed the bishops to use the King's seal, and to issue process in his name, not in their own; and the Act, though repealed by 1 Mary c. 2, had been revived when the Act of Mary, in its turn, was repealed by 1 Jac. I. c. 25. All the episcopal acts since 1604 were, therefore, void; all the men deprived were *ipso facto* reinstated in their places, and the bishops themselves were at the King's mercy for their illegal procedure. In conclusion, he begged the Lords to join with the Commons in this petition to the King.

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[1] A long Puritan account of the conference is in Lambeth MSS. 445 f. 424 ff. from which, with the aid of the account in the *Commons' Journals* of Yelverton's Report to the House (I, 304), the account in the text has been made up. It was necessary to abridge it.

Bancroft replied that the condition of affairs made mercy inexpedient; he saw no indication of reform on the part of those to whom clemency had already been shown; and indeed found them bolder than before, still writing books, still preaching against the Establishment. The Commons had petitioned in their favour "when the clowdes began to gather together," said Yelverton, "but since (then) the storme had fallen and thrust out three hundred," and in these dangerous times, with the papists increasing, they felt the need of those quiet and unassuming pastors, who agreed with the Church in doctrine though not in ceremony, while the papists, who were tolerated, agreed in ceremony but not in doctrine. Not three hundred peaceable men were ejected, retorted Bancroft, but sixty factious and unreasonable ministers, against whom were opposed nine thousand conformable clergy. Their disagreement in ceremony was vital, for, where there were no ceremonies and no established form of worship, the Church as an institution could not exist. The fact that thousands conformed was of no consequence, said Yelverton, especially such thousands as had been gathered into the Church,—the covetous, the nonresident, those unable to preach or expound, "Dum Images" without "strength to lay the Axe to the roote of the Tree." Pity the starving wives and children of these poor and pious men who are thrust out into the cold; pity the man himself whose fault was "of infirmitie and for feare of sinn;" beware lest in grubbing out the tares, you do not at the same time destroy the corn. If their Lordships would but join in this petition to the King, they would bind the whole laity of England to them in gratitude.

Bancroft replied that he marvelled to find them supporting so strongly the very men who declared them reprobates and covetous seekers of the spoils of the Church. He referred to the breach still unhealed between the gentry and ministers over the disposition of the ecclesiastical property when the Church should finally become Presbyterian. As to the points of law. the statute of Elizabeth did not intend to separate faith and the sacraments from ceremony. The sacraments were ceremonies and ceremonies were religion; the Act intended that men should assent to all thirty-nine of the Articles and never meant that it should be expounded by every Tom and Jack, as he pleased. Nevertheless, he admitted (according to the Puritan account) that some of the ministers had not been deprived according to the forms of strict law, and that subscription ought to be required only from men who applied for induction to benefices and could not be legally required of the whole existing clergy. But he did insist that the bishop's proceedings were legal: the Act of Edward VI regarding the use of the King's seal by the bishops was in the affirmative and said only, it shall be thus, and did not declare, it shall be thus and not otherwise. In any case, the statute of James only repealed the Act of Mary, and did not expressly revive the Act of Edward VI. If his acts had been illegal, he was willing to trust the King's clemency. Then, turning to Yelverton's defense of the ministers, he remarked that where they declared their pastors kept the people warm, he thought they kept them too warm and taught them indiscreet behaviour. "Our good opinions of them made them the worse and yf we will lett our petition fall this session they will all subscribe." He disliked the reflections cast upon the character of the conforming clergy: there were many things desirable in a minister besides the ability to preach. Religion was something more than a matter of the intellect. "There is no religion where there are no ceremonies, the hands, the knees must be affected besides the harte." He urged them to support only the conformable clergy in the future, and said again that there was no hope of mercy for the deprived ministers without some assurance that they would conform.

On May 3, when Yelverton reported to the House the results of the conference, the debate between the adherents of the bishops and their opponents waxed so acrimonious that the clerk of the House either became too interested to write or thought the remarks too indiscreet to be preserved, for he left only a series of dashes in the records. The balance of power lay with the opposition, for the House at once read a third time and sent up to the Lords, the bill to restrain the execution of canons ecclesiastical unless confirmed by Parliament, and the Act against scandalous and unworthy ministers.

The Lord Chancellor delivered the bishops' final answer to the House and was, so Mr. Martin reported on May 13, "short and rough." He said, in substance, that obedience was the most desirable of virtues, and that, if the ministers had possessed it, they would not be in need of mercy. The objection of the Commons would be considered, the use of excommunication in minor matters would be reformed, but the House would do well to relinquish the subject to the bishops to whom it belonged. Not one whit daunted, the House despatched Sir Francis Bacon to the King with a long petition containing the grievances against the Canons, the oath *ex officio*, the deprivations, and the like,[1] and the Speaker communicated the gist of the petition to the King in person. James was gracious to both of them.

But the attitude of the House of Commons had excited the hostility of the clergy in general, who, animated by the new spirit of institutional life which Bancroft had infused into them, were not slow to express their resentment. One of them, however, selected an inopportune time to express his indignation. Parker, one of the Canons of Lincoln Cathedral and a member of Convocation, preached at Paul's Cross on May 25, and stigmatised the action of the House of Commons as confused and disorderly. The House was presumptuous, he said, in dealing thus with matters over which it had no jurisdiction. Such behaviour was little short of "trespass and sedition." He illustrated this screed with the parable from IX Judges: where the trees, desirous of choosing a King, applied in vain to the olive, the fig, and the grape vine, and found only the bramble willing to accept the post; Convocation was the olive, he insinuated, and the House of Commons the bramble. After having harped on these strings for some time with more zeal than discretion, he at last shouted out, "Doth the Church totter? Let it totter! You have nothing to do withall!"[1] Next morning, the House of Commons was in an uproar and would very likely have handled him "shrewdly," had the bishops not already acted in the matter and had Parliament not been prorogued.

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[1] Cotton MSS. Cleopatra, F, II, f. 191, undated.

The session was over and the Puritan gentry had accomplished very little of the "good" so confidently anticipated by their ministerial friends. Their main difficulty had been an unwillingness to recognise the facts of the situation, for, while they insisted that they asked only for mercy, they asserted either explicitly or tacitly, that the ministers had committed no offence which would justify their deprivation or suspension. Although Yelverton's speech was by far the most moderate yet made in their behalf, he had not only defended by line and precept the legality of their conduct, but had also attempted to prove the episcopal proceedings null and void; and had affirmed as usual that the refusal to subscribe was, in any case, not an offence of consequence.[2] Such a request for mercy was equivalent to a demand for complete capitulation, and by granting it, the bishops would have confessed that their proceedings had been unjustifiable. So long as the petition for mercy was couched in such terms, the Church simply could not grant it, and maintain its self-respect. The Canons sanctioned the deprivation; the King had explicitly ordered it; the Judges of the Common Law had solemnly affirmed its legality in the Star Chamber; and, so far as anything could be, the deprivation was an accomplished fact. The bishops had "engaged their credit," and the very least that could be asked from the ministers and their supporters was some acknowledgement that they had been at fault.[1] But the ministers, collectively and individually, refused to admit anything of the kind; the House of Commons, as a body and in committee, declined even tacitly to concede the point; the petitions of the gentry and the tracts of the ministers were equally firm. They had been in the right from the first, and what they meant by "mercy" was a public acknowledgement of that fact by the bishops, and the annulling of all the proceedings of the last two years, not as a concession to grace and clemency, but as a right, as a recognition of the true legal view of the case.

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[1] *Commons' Journals,* I, May 26, 1606.

[2] They had also tried to impeach the legality of the bishops' deprivations on the ground that they had used their own seals instead of the King's. To their chagrin they found that they had been too hasty, for it presently developed that the bishops had been proceeding under the Act of 25 Henry VIII c. 20, as explicitly revived by 1 Elizabeth c. 1, a statute later than the acts of both Edward VI and Mary, and one which the legislation of James I had not disturbed. (See the Case in Parliament, 4 Jacobi Regis, S. P. Dom. Jac. I, XXI, no. 19, also in Cotton MSS. Cleopatra, F, II, f. 37. Also a paper in XII *Reports,* 7. These same arguments were later launched against Laud. See Registrum Laud: f. 272 a, at Lambeth Palace and also the Report of the Judges to the Star Chamber on July 4, 1637 and the proclamation of August 18, 1637, in Rymer, *Foedera,* XX,

This had been all very well in 1604 before the Canons had been confirmed and the Church had taken its stand. But in 1606 the whole matter was *res adjudicata*, a question no longer open to debate, an issue which had been deliberately and consciously decided by the Church with all the pomp and legal ceremony of which the institution was capable. Even if the deprivation had been inexpedient and unjust to the last degree, it would have been still more inexpedient for the Church to admit that it had erred. The Puritans demanded, then, what it was not in the power of the bishops to grant. Nor had the actions of the House conformed to its protestations. Many bills condemning the condition

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156, 168-9.) To Bancroft and the Council the incident was another demonstration of the "factious" and "seditious" behaviour of the Puritans.

[1] "His Majestie to the lower hous supplications for the ministers said that before mercie must go subscriptions and thairfore they must acknowledge their fault if they looked for mercie. If it can be prooved they offended his Majestie, they are reddie to acknowledge their fault, but they ar most loyallie affected to God and to thaire soveraigne." James regarded disobedience to the Church as equivalent to disloyalty to him: the Puritans did not. The parties were therefore talking at cross purposes. *A Christian and Modest Offer of a Most Indifferent Disputation,* (1606).

of the clergy, instituting a modified Presbyterianism, abolishing the necessities of ecclesiastical administration, had been revived and passed. Bancroft's bill for the reform of excommunication had, on the other hand, been as quickly shelved, and all the indications showed that the desire to make the administration of the Church by the bishops an impossibility had not in the least abated.

Unconsciously, both sides derived support from the sanctions of the time. Bancroft and the Churchmen were filled with the new idea of the administrative needs of the Church, which required that the men in office, as well as candidates for induction, should be thoroughly sifted to winnow the fit from the unfit. A certain leaven of individual dissent was expected and was treated according to the medieval notion that a man's personal convictions made no difference when he took an oath or a test for the weal of the Church. The Puritans, on the other hand, were weighed down with the belief in their individual responsibility for their own salvation, and felt that, in swearing to anything which they did not conscientiously approve, they jeopardised their chance of eternal happiness. Their consciences would not allow them to subscribe or conform, and would not permit them, when they honestly believed in their own innocence of real guilt, to declare that they had been in error.

Meanwhile, the clergy in Convocation under the guidance of Dr. Overall, the Dean of St. Paul's, had been busy drawing up the Canons of 1606.[1] To establish the Divine Right, either of kings or of bishops, was not their aim, but the formulation of a logical and historical basis for the Royal Supremacy. The Disciplinarians, the Catholics, and the new political theorists, like Buchanan, Bodin, and the author of the *Vindicia contra Tyrannos,* had derived support for many of their most telling arguments from the Old and New Testaments. They had, of course, not given the passages they extracted from those sources an interpretation which Bancroft and James could approve, and, therefore, to furnish an authoritative rendering of Scriptural history in its relation to the Royal Supremacy, in its relation to the authority of the King over his people, and in its relation to the link between Church and State, was the object of the new Canons. They were therefore entirely speculative and theological; and, although each statement closed with words signifying that all who disapproved of it were in error, there was no requirement in the whole volume that any one should ever be put to the test whether or not he assented to its propositions, and no penalties were assigned in case he refused. It was not expected that the Canons would do more than give the English Church a definite position upon the hotly debated question of ecclesiastical history between Baronius and Bellarmine, on the one hand, and Beza and Raignolds, on the other.

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[1] Printed in Cardwell's *Synodalia,* I.

Whether or not Bancroft had any share in the drafting of the Canons, is unknown: he was certainly not in Convocation this year, having delegated his presidency to a commission headed by Overall. Presumably, both he and James had approved the general scheme, or the clergy would never have been allowed to undertake such a compilation; the King, however, refused to confirm the final product and made no secret of his belief that the clergy had dipped too far into the mysteries reserved for kings alone: Bancroft approved the first division, but it is not at all certain what he thought of the Canons as a whole. The leaven of Arminianism had begun to appear: it was asserted, with increasing frequency, that priests were made by "God's ordinance" and were not elected by the people; that government came to the State from God, and not from the grant of the people; and that the Kings of Judah were "elected and named by God himself."[1] Nevertheless, the whole document is impregnated with the Archbishop's ideas. The description of the rise of Episcopacy,[2] as the product of natural causes, and not of divine decree, closely tallies with his statements in the Sermon of 1588.[3] Nowhere do we find the words "Divine Right" applied either to kings or bishops, and the fundamental part of that theory is lacking, for it is everywhere declared that, although the present State and Church possess God's approval, they are not the only possible forms of government which might receive His commendation. The Laudian theory of the Divine Right of bishops declared not only that no other form of government was possible, but that without Episcopacy, no salvation was to be hoped for; that it was the one indispensable link between God and man. No trace of this idea appears in any writing with which Bancroft had any connection. He always stoutly claimed that men could be saved in any of the Reformed Churches; and that those who lived in the Middle Ages under the corrupt papal dispensation, had not been utterly condemned. Government as understood by the Church at this time, justly observes Dr. Gardiner,[1] "was of far too high a nature to be allowed to depend upon the arbitrary will of the Pope or of any body of clergy whatever; still less should it depend upon the equally arbitrary will of the people; it ought not to be based upon will at all; it was only upon right that it could rest securely. Such a theory had evidently a better side than those are accustomed to perceive who malign the Church of England as a mere handmaid of tyranny. It was a recognition, in the only way which in that age was possible, of the truth that society is a whole and that religious teachers cannot rightfully claim a place apart from it, as if they were removed from the errors and failings of human nature."

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[1] Articles II, and VI, Part I, VII; XVII.

[2] Part II, Article VI.

[3] Hickes, p. 364.

During all these sessions of Parliament, Bancroft had been very diligent in performing the routine work of the House of Lords; and, in fact, if the scanty records are to be trusted, was the most prominent member, the chairman of most of the committees, and a frequent speaker in debate. The debates in the Lords and conferences with the Commons over the Union with Scotland, over purveyance, wardship, and the tenures, occupied a great deal of the time during all the sessions of James's first Parliament; and in all Bancroft was active.[2] But he did not by any means limit himself to matters of national importance. He was chairman of committees to restrain the multitude of buildings in and about Westminster; to confirm the lands of Sir William Smith against the claims of All Souls College, Oxford; to remedy defective titles; to repress usury; to preserve wood and timber; to confirm the lands of companies in London; to remedy the abuses resulting from unlicensed alehouses;—all these within three months besides ecclesiastical business.[3] His regularity of attendance was as remarkable as the scope of his interests: in 1597 he was present at thirty-one, out of thirty-six sittings; in 1601, at thirty-five out of thirty-six sittings; in 1604 at fifty-one out of seventy sittings, being this year very busy in Convocation with the passage of the new Canons; in 1605-1606, at all but three out of seventy-nine sittings; in 1606-1607, he sat seventy out of eighty-eight days, and in 1610, was present fifty-three times and absent forty-five times, chiefly because of illness. Such constant attendance in Parliament was remarkable for a man so active in the High Commission, in the Privy Council, and in his diocesan and archiepiscopal duties. He must have suffered a great deal, during these later years of his life, from his old enemies, the ague and the stone; and nothing attests his great physical strength so well as does his continued energy and vigour.

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[1] *History of England,* I, 289-290.

[2] See especially April 12, 1606; December 18, 1606. He was also one of the Commissioners to confer with the Scottish Commissioners about Union.

[3] These examples have been drawn from the months December to January and February, 1606-7.

During the spring of 1606, while Parliament was in session and during the summer while it was prorogued, the Puritan ministers continued to write, publish, and preach in a fashion which confirmed the royal and episcopal belief that they still were eager to establish the Discipline; and were now urging the case of the deprived ministers less to reinstate them in their benefices, than to censure the bishops for having deprived them; and to secure from Parliament a distinct affirmation that the ecclesiastical procedure was illegal.

At this juncture, Henry Jacobs published a tract, which had been circulating for some time in manuscript,[1] entitled, *A Christian and Modest Offer of a most indifferent conference or Disputation about the maine and princypall controversies betwixt the Prelates and the late silenced and deprived ministers.* He proposed to argue and defend these propositions: "Everie trew visible Churche of Christ is suche a spiritualle bodie politik as is speciallie institut by Christ or his Apostles in the new Testament. There is no trew visible church of Christ but a particular ordinary congregation onely. Everie trew visible Churche of Christ or ordinarie assemblie of the faithfull hath by Christ's ordonance power in itself imediate under Christ to elect and ordaine depryve and depose their ministers and to exercent all other ecclesiasticall censures." "The office and calling of Provinciall and Diocesan Prelats is contrarie to the word of God." "The ceremonies in controversie ar not indifferent, but contrarie to the word of God. The ministers refusing the conformitie and subscription requyred ar therein nether schismaticks, Seditious persons, Enemmies to the Kings Supremacie or annie way undewtifull to King or State.''

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[1] There is a manuscript copy in Lambeth MSS. 933, f. 24 without date. It is in a good clerkly hand and it seems unlikely that a printed book, which could be bought for a few pence, should have been copied out carefully by hand.

He declared that he spoke for the whole party; he had been and was still one of its leaders, was a man well known to bishops and statesmen alike; and although his views were now more radical than those of the majority of his old friends, he had been spokesman so long that no one would believe he had not still a large following. There could be no doubt that he aimed here at parity, he spoke of the ''Presbytery'' desired; he declared the bishops unlawful and he exonerated the ministers of all blame. Yet the House of Commons had but just declared that they desired neither parity nor Presbytery, but simply mercy! Jacobs really disavowed the protestations made in Parliament, and injured his party beyond estimation. How could the bishops publicly debate whether or not their own offices were contrary to Scripture and sustain any view except the affirmative? How could they debate the question of the deprivation of the ministers and conclude that the ministers were innocent? The Puritans seemed to expect them voluntarily to come forward and convict themselves, by their own statements, of cruelty, oppression, and illegal conduct. Other tracts came forth in favour of the Church, notably Feilde's *Of the Church Four Bookes,* which he dedicated to Bancroft. When the Parliament met, therefore, in November for the session of 1606-7, the situation was no less strained than it had been at the prorogation in May.

The conduct of the lower House was not calculated to restore confidence and harmony. It began by considering the Bill against Canons not confirmed by Parliament; proceeded to read and pass a bill attacking the procedure of the ecclesiastical courts; and so read and passed most of the radical bills of the previous session. Then, in May, came the usual petition of grievances, which was reported from the committee on June 16. It was based upon the petition of 1606 and was to serve, in its turn, as precedent for the mammoth bill of ecclesiastical grievances of 1610. Just as the Puritan demands at the Hampton Court Conference, the Canons of 1604, and the Oath of Allegiance were the outgrowth of previous experience, so, too, the petitions of Parliament and the proposed Puritan legislation were developed little by little from session to session by debate, discussion, and the inevitable revision. The new petition was, in the main, only the rephrasing of the arguments and complaints which had been already delivered to the bishops in person during the conferences of the preceding session. The Speaker informed the House that the King in person had told him there was no need of presenting it, for he was already aware of its contents; and had done all that could be done towards redressing the grievances complained of. The general opinion, however, favoured proceeding with the petition, whereupon the Speaker said that there were many precedents of similar orders from the Crown upon religious subjects during the reign of Elizabeth and her predecessors. The House doubted his word and appointed a committee to look for those precedents. In due time, the committee reported through Sir Robert Cotton, the noted antiquarian, that the Speaker was right: "I must be resolved that since, uppon view of presidents, the King may by his ancient and iust prerogative limit the comons theyr bills and petitions both for tyme, person and matter, it canne be no wrong to the liberty of the House," to obey this particular command. After reading from the Parliamentary Roll of Henry VI, Richard II, and Henry IV, he concluded by reading a citation from the Roll of 13 Edward III, "commaunding the howse of parliament to entertayne no causes in consultation but those which were delivered to them in expresse charge."[1] Similar precedents for the reigns of the Tudors were produced by the Attorney General. The House was far from appreciating the admirable honesty displayed by its committee, and for a time, it seemed as if a majority were in favour of refusing to obey the royal command, precedent or no precedent. Finally, on June 18, as a compromise, the petition was read in the House and a vote secured that it should "sleep."

A few days later, "sundry Particulars touching the exhorbitant Power and Practice of the High Commission (were) read and opened out of a paper to the House," and, next day, appeared in Fuller's hands a bill to reform the Commission on the ground that it was illegal. The reason for this sudden attack upon that court lay in the fact that Nicholas Fuller had some days earlier argued in King's Bench that the ordinary procedure of the High Commission was flatly contrary to the Act of 1 Elizabeth c. 1, upon which the Commission rested, and was therefore illegal. But the prorogation of Parliament sent the battle of the Puritans and the bishops outside the walls of the House of Commons, and we now approach the important and exciting attempt to save the ministers and weaken the organisation of the Church, by robbing the High Commission of its most necessary powers through the action of the common law courts.

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[1] S. P. Dom. Jac. I, XIX, no. 37.

CHAPTER V

ATTACK UPON THE HIGH COMMISSION, 1607

The use of the temporal courts as a weapon against the Church was in 1607 no new device. It had been employed during the reign of Elizabeth in several notable instances, and, from the moment early in 1604 when the deprivation of the ministers became a probability, the Puritans had given a great deal of attention to the possibilities of legal obstruction. The manifesto issued by the leaders in August, 1604,[1] had counselled the men threatened to use every legal means they could to retain possession of their benefices; and Jewell had been sent to London in November expressly to inquire of the lawyers, "what may bee done by appeale notwithstandinge the Canons? What may be done by prohibicon either from the King's bench or from the Chancery or Common Pleas?"[2] The ministers had not been slow to act. Travers had appealed at once to the Archiepiscopal Courts from the sentence of the Bishop of Norwich, and the faithful in all parts of England had taken up contributions to enable him to procure the best of counsel.[3] One of the Exeter Puritans no sooner learned that he was suspended than he set out for London, post-haste, and demanded a prohibition from the King's Bench to forbid the bishop to proceed further against him;[4] Alexander Cooke of Lowth procured an inhibition from the Chancery for the same purpose;[5] but neither of these writs was sustained. Chope, who had just been presented by Lord Rich to the rectory of South Shoebury in Essex was refused induction by the Bishop, and, inasmuch as it was an excellent test case —for the Puritans themselves had to admit that the statute of Elizabeth and the new Thirty-sixth Canon completely covered it—he carried it by some writ or other to the common law courts where the decision went against the Bishop.[6] There was great jubilation amongst the "godly" when the news of this success was received, and they set to work straightway to obtain more writs of the same kind.

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[1] Additional MSS. 28571, f. 205.

[2] S. P. Dom. Jac. I, X, no. 81.

[3] Papers found on Jewell.

[4] Proclamation of February 18, 1604-5.

[5] Hatfield MSS. 103, f. 139.

[6] *Survey of the Booke of Common Prayer*, 1610.

Warned by the tone of the manifesto of 1604, Bancroft had striven to provide for any such possibilities by securing opinions from the Attorney General and the Chief Justice in December, 1604, to the effect that the bishops possessed full and sufficient power as bishops, aside from the High Commission, to deprive the ministers; and by forwarding to his colleagues minute directions as to the proper legal forms to observe.[1] Then, in the Star Chamber, in February, 1604-5,[2] the judges as a whole had confirmed the opinion already given by Coke and Fleming, that no common law process, by prohibition or inhibition, could obstruct the episcopal sentence. Nevertheless, the judges had already granted such writs to the Puritans, and now issued more. The High Commission had imprisoned and fined two men, one for adultery and contempt, and the other for abusing a bishop in public; and yet one had been freed by a Habeas Corpus issued from the King's Bench, and the other by a similar writ granted by the Common Pleas. Prohibitions had been sustained on the ground that the High Commission had no authority to fine and imprison.[3] While these instances, and the bulk of the others complained of by Bancroft in October, 1605, were not directly connected with the deprived ministers, the Puritans were able to use the strained relations, which already existed between the common law and the ecclesiastical courts, as a weapon in their own struggle with the Church. For they now found an ally far more powerful than the justices of the peace and members of the House of Commons; far more able to supply them the aid they sought, and ready to give it for private reasons. Some further cases of which we know little appeared in 1606, when the deprived ministers attempted, with the aid of the common law, to oust the men whom the bishops had put in to fill their benefices; but they did not succeed.[4] It is also clear that the State and Church understood that something of the sort was still going on in January, 1606-7, for Coke, just promoted in June, 1606, to be Chief Justice of the Common Pleas, wrote to Salisbury that he could learn of no process pending in the King's

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[1] Letter to the bishops of December 22, 1604, in Wilkins, *Concilia*, IV, 408.

[2] *Croke's Reports*, II, 37.

[3] Articuli Cleri, Art. xxii.

[4] *Report on the MSS. of Earl of Cowper*, I, 62. July 11, 1606.

Bench "to countenance the ministers unconformable," and was sure the secretary had been misinformed.[1] Thus far there had been no test case of considerable dimensions and notoriety; most of the writs granted by the common law judges had not been upheld; the public opinions of the judges discountenanced such attempts; and therefore, although the Puritans had often bragged of great results which would soon be achieved, little had been accomplished. But now, in the spring of 1607, a test case was at last arranged to raise the issue in unmistakable form and to decide the point for good and all.

The central point in the ecclesiastical fabric was, as the Puritans had long seen, the High Commission. It alone possessed the power to fine and imprison; it alone could cite men from all parts of England and Wales; it alone was the mainstay of the bishops' ordinary powers and the one force which made the every-day administrative routine efficient. To deprive it of the power to fine and imprison, of the right of interfering in petty diocesan affairs, to limit the number of commissions to two general bodies at London and York, which would not be able to handle their great legal business between party and party, and at the same time supervise the local administration of the Church, had for some years been the hope of the Puritans. The King had refused to remodel it as desired; no Act of Parliament to accomplish that end could be secured; and there now remained the hope, roused in sooth by the attitude of the common law judges towards it, that it might be reduced to impotence by a judicial decision. The Commission once powerless, the deprived ministers would be reinstated; the inefficiency of the ecclesiastical administration would become apparent to every one; and the King might be induced to change the government of the Church to Presbyterianism. At least, without the Commission, the Church could not very well evict the Puritans from its ranks; and they would be reasonably free to practice their own ideas. The conduct of this legal campaign was entrusted to Nicholas Fuller, a barrister of Gray's Inn.

When Fuller appeared at the bar of the King's Bench in April, 1607, and desired writs of Habeas Corpus for his clients, Ladd and Mansel, he was already a marked man. He was one of the lawyers with whom the Puritan leaders had long been in the habit of consulting; and he had already conducted cases for the ministers and their friends in the common law courts. Besides his activity as a lawyer, he had been a member of Parliament, and had already made his presence felt by the Crown and by the bishops. He had more than once defended the ministers and openly attacked the Church in debate, and had brought in several of the most objectionable Puritan measures of the sessions of 1604 and 1606. As if all this were not enough to render him obnoxious, he had declared himself in favour of delaying the subsidies of which James was in such dire need;[1] he had opposed the Crown on Bate's case and the imposition on currants;[2] and, chiefest of all, he had vigorously attacked James's favourite scheme, the Union with Scotland. Fuller likened England to a rich pasture surrounded by a fence and pictured the Scots as lean and hungry kine, roaming, eager-eyed, along the boundary, seeking an opening. He dilated to the House on the notorious poverty of the Scots, on their quarrelsomeness and greed, and lamented the dearth of good things which Englishmen would experience when that hungry herd from the North had entered the rich fields by a broad and open gate. There was not room in England for a single Scotchman, he declared.[3] The fact that he expressed the sentiments of the majority of Englishmen did not render his conclusions more palatable or make his conduct less reprehensible in the eyes of the Scottish King.

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[1] Hatfield MSS. 116, f. 93, Original, signed. January 8, 1606-7

If the bishops and the King had unfavourable impressions of Fuller, the High Commission had already experienced his "insolence." In March, 1607, just one month previous to his request in favour of Ladd and Mansel, Fuller had barely escaped a conflict with the Commissioners. Some twenty persons in Yorkshire had been summoned by that court to appear at London and answer various charges against them; they had not come, and had consequently been jailed for contempt, as was provided by the regular procedure of the Commission. They had then retained Fuller as counsel, who at once made a motion in their favour at the bar of the Exchequer asking for a Habeas Corpus, which would have freed them for the time at least from the Commission. He seems to have also made a similar request in the King's Bench. In one or the other court he had hinted rather broadly, that he did not think the Commissioners were competent judges in such matters, and that their use of the oath *ex officio* seemed to him flatly illegal; on examination before the Commission, he had maintained his position and was told that if he continued to express such opinions in public, he would soon find himself in jail.[1] Fuller later asserted that he had been employed by the common law judges "to plead for poore men imprisoned by the ecclesiasticall commissioners."[2]

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[1] *Commons' Journals*, I, 276.

[2] *Commons' Journals*, I, 294.

[3] *Commons' Journals*, I, 334.

Fuller, therefore, must have known that he was by no means an insignificant man, who could say what he pleased with little chance of its being noticed by those in authority; and the leaders of his party should have realised that a man far less well known would have been a better manager of such a delicate and important case. Within a month, Fuller opened the campaign by delivering in public a scathing arraignment of the High Commission. His speech was no chance effusion uttered in a thoughtless moment, by a man of no standing and caught up and prosecuted by a querulous and tyrannical government.[3] It was another of a long series of overt attacks upon the Church by a man who had many times demonstrated his animus and his ability to accomplish whatever he undertook under its spur.

Thomas Ladd, Fuller's new client,[4] was a merchant of Yarmouth, who had been tried in the ecclesiastical court at Norwich for attending conventicle at the house of one Jackler, a nonconformist minister, who had been deprived for his refusal to observe the Canons of the Church. The record of Jackler's institution at Norwich shows that he had conformed in 1603, and possessed no degree of any sort from any university. He was, therefore, not a learned man. Ladd declared, in his defence, that they had held no conventicle, inasmuch as they only met privately to go over the sermon preached on Sunday morning by the minister of the Established Church. But there can be little doubt that those present added statements of their own and that the meeting was. in strict law, a conventicle. This, however, was not the issue in the case. Ladd had made some difficulty about taking the oath *ex officio,* and, after he had testified and a considerable discrepancy became apparent in his answers, he had been summoned to Lambeth upon a charge of perjury. There he refused to take the oath *ex officio* at all unless he was first allowed to peruse the answers he had made at Norwich, and, inasmuch as the procedure of the High Commission made it impossible to grant this request, he was committed to prison on March 29, 1607. Fuller's other client, Mansel, a nonconformist minister, had been arrested as one of the movers of a petition to the House of Commons, which the Government thought offensive, and having also refused to take the oath *ex officio* unless he was allowed to see the charge against him, was likewise imprisoned.

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[1] "*The argument of Nicholas Fuller in the case of F. Lad and R. Maunsell, his Clients. Wherein it is plainly proved that the Ecclesiastical Commissioners have no power, by vertue of their commission to imprison, or put to the oath ex officio or fine any of his majesties subjects.*" London, 1607. 4° Reprinted, London. 1641, p. 22-23. This evidence comes from Fuller himself, and seems trustworthy. But, inasmuch as the tract was published by Fuller's friends long after he was imprisoned, in hope of exciting public sympathy in his favour, it is just possible that this may be a distortion of a real occurrence inserted to show that the Commission was persecuting him.

[2] Hatfield MSS. 124, f. 59, Copy. February or March, 1607-8.

[3] Such has been the ordinary view taken of Fuller's Case.

[4] For this most interesting episode Lansdowne MSS. 1172, f. 97 (other copies: Hargrave MSS. 33, f. 117, and two copies in the MSS. of the Marquis of Westminster) is the only trustworthy source for the dates and actual facts. It purports to be a full report of the case and contains a long Latin account of the events leading up to Fuller's commitment by the High Commission, then quotes the writ of committal in full in English, then gives in Latin the consultation issued by the King's Bench, and closes with some further notes of the case in Latin. It was probably prepared either for use at the hearing before the King's Bench in September, 1607, at the consultation on the prohibition, or was employed by Hobart in the hearings on the Habeas Corpus in November, 1607. It is just possible that it was prepared by a newswriter and circulated for information. In any case, it is far more trustworthy than the tract entitled *The argument of Nicholas Fuller*

At this juncture, Fuller was retained as counsel for the two prisoners and at once took charge of the case. He soon produced from the King's Bench writs of Habeas Corpus for the two men (April 30, 1607) and secured May 6 as a date for the hearing. In his argument, he proceeded to prove[1] to his own satisfaction

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which is only an ex parte statement by Fuller's own friends, which we know omits much that he admitted he said, and which adds more which it is reasonably certain he did not say.

[1] Exactly what Fuller said at these two hearings is very difficult to demonstrate. The indictment of the High Commission against him given in Lansdowne MSS. 1172, does not detail his speech but only recounts the points to be used legally against him. The tract which is ostensibly the actual speech he delivered, is certainly only a speech which he drew up (if he ever wrote it at all) after these two hearings, for use before the twelve judges in September, 1607, (Hatfield MSS. 124, f. 59.) The tract was printed in December, probably without his knowledge. (Hatfield MSS. 124, f. 81.) Nevertheless, the main legal contentions there set forth may be accepted without much hesitation as the substance of what he said on May 6 and June 13,

at least, that his clients must be released, because the High Commission had no legal authority to imprison them. That court, he declared, was based upon the statute of 1 Elizabeth c. 1. section viii which gave to the commissioners only such power as the bishops had possessed before that statute. By reference to acts of Parliament, and by somewhat questionable deductions and analogies from them, he demonstrated that the bishops had never had, previous to 1559, authority to fine or imprison. The Commission, therefore, could possess such a power, he asseverated, only from an act of Parliament, and the statute of 1 Elizabeth, the only one which could legalise the exercise of such authority, did not sanction it. He then read the Act in court and interpreted it for the edification of his audience. Finally he proceeded to compare the extensive powers which every one knew the Commission employed with the grant of authority to them in the Act, and pointed out, in voluminous detail and with many comments derogatory to the Commission, the discrepancies between the two. He paid little attention, however, to the fact that the royal Letters Patent, which the statute did authorise, conferred on the High Commission, by express language or by implication, every power it put in practice. It was enough for him that the statute itself did not directly make any such comprehensive grant.

His argument was offensive enough, but his comments[1] made it "smell to heaven." He declared that the manner of proceeding in the Commission was "popish": that the ecclesiastical jurisdiction was "Anti-Christian" and "not of Christ but of Anti-Christ"; that the power of the Commission was being used to suppress the Sacrament and true religion. To his mind, the bishops "did proceede in these dayes by taking an ell whereby they had but an ynch granted them, and in examining men upon their oathes at their discretion and indiscretion as such their dealings were now lamentable." The oath they administered tended "to the damning of their souls that take it." Men were imprisoned whenever the commissioners saw fit, and "they detained them in prison as longe as they list." Having said this and more on May 6, and finding himself still at liberty, he took heart and, at the second hearing on June 13, launched forth upon a further set of diatribes which

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much expanded and embellished, and with many significant omissions.

[1] These are to be found only in Lansdowne MSS. 1172.

capped the climax of his "insolence." He did not scruple to hint that the commissioners embezzled all the fines they collected; and were in process of extending their authority so as to embrace every branch of criminal and civil law. The judges of the King's Bench, before whom this remarkable argument had been delivered, debated among themselves, but made no decision in the matter, reserving the case for further hearing before all twelve judges. But Fuller never argued the question further, for he was soon taken into custody by the High Commission. His indiscretion in making such virulent comments caused the main point which he had raised—the illegality of the High Commission—to drop out of sight. With it, disappeared Ladd and Mansel, whose fate we do not know.

Dr. Gardiner states[1] that Fuller procured for Ladd and Mansel a consultation, "a modified form of prohibition." There is, however, no statement in any of the authorities that the court took any action at all beyond ordering a new hearing before the assembled judges, which, according to Fuller himself,[2] was certainly commanded, for which he prepared the speech afterwards printed, but which was never held, inasmuch as the chief actor was himself a prisoner when the court met in September. Furthermore, a consultation was not a modified form of prohibition, but the authoritative annulling of a prohibition by the court which had issued it. On "consultation" with the lawyers from the court prohibited, the judge perceived that he had issued the prohibition wrongly and authorised the court prohibited to proceed as if no such writ had been issued. A consultation could only follow a prohibition, and could in no case issue, as Dr. Gardiner elsewhere infers, as an original writ. Moreover, as Ladd was before the King's Bench on Habeas Corpus and not upon prohibition, the court either must remand him to prison or free him altogether: there could be no half way procedure. Dr. Gardiner seems to have confused the consultation issued to Fuller himself in September, or the prohibition he procured in July for himself, with the action taken by the King's Bench in Trinity Term on the Habeas Corpus granted in April to Ladd.

The High Commission arraigned Fuller, early in July,[3] upon a long list of "scandalous" things he had "factiously and falsely" affirmed "to the slander of the Church, to the hardening of the Papists" and "to the malicious impeachment of his Majesty's authority in Causes Ecclesiasticall." The case was heard before Bancroft, the Archbishop, Ravis, the Bishop of London, and other leading men of the High Commission. Fuller, however, had been not less prompt than the commissioners and, before the case could be put through the necessary legal stages preceding sentence, he had procured a prohibition from the King's Bench. This writ, granted by Justices Fenner and Croke in the vacation after the close of the Trinity Term, forbade the Commission to proceed further against Fuller, on the ground that the case should properly be heard in the King's Bench;[1] and there, pending the return of the prohibition and argument in its defence, (which because of the long summer vacation of the courts, could not be heard till late in September) the matter perforce rested. Although the High Commission could not convict Fuller, it did keep him in jail during the intervening months at the White Lion, Southwark.

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[1] *History of England,* II, 37.

[2] Hatfield MSS. 124, f. 59.

[3] His Parliamentary privilege had protected him until July 4, when Parliament was prorogued. He was present in the Commons on June 19, 25, 26, and July 1.

When the news of Fuller's daring and its consequences reached James and his councillors, they were angry indeed; and were, besides, in a measure apprehensive of further developments. Salisbury wrote to Sir Thomas Lake, the secretary in personal attendance upon the King, that Fuller's actions would end by affecting the stability of the government—"noe monarchy beeinge able to stand where the Churche is in anarchy." The "absurd" action of the judges in granting such a man a prohibition for so slender a reason had, he thought, "given so apt occasion to make a president for the like mischiefe as in the effect thereof may be well resembled to fayre fruits gathered from rotten trees."[2] James, too, feared evil results if the authority of the Commission was seriously impeached. Constitutionally timid, the discovery in succession of

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[1] Dr. Gardiner states that Fuller was not imprisoned or proceeded against by the High Commission till November: but Lansdowne MSS. 1172 says explicitly that he was arraigned early in July, ("just after the close of Trinity Term") and in that same month secured a prohibition from the King's Bench. Here again Dr. Gardiner repeats the curious error that a prohibition and a consultation are the same. Fuller's own statement, in a paper that could hardly have been written later than the following March, 1608, that he had been in jail nine months, exactly tallies with this reading. He was certainly released for good in April, 1608, and could not have spent nine months in jail between November, 1607, and March, 1608.

[2] Hatfield MSS. 124, f. 135. July (?), Salisbury to Lake. Draft.

Watson's Plot, Cobham's Affair, and the Gunpowder Treason, had led him to fear an outburst of anarchy from almost any source. "I praye yow," he wrote to Salisbury with his own hand somewhat later, "forgette not Fuller's maitter that the ecclesiasticall comision maye not be sufferid to sinke besydes the euill desairtis of the uillaine, for this farre darre I prophecie unto you, that quhen soeuir the eclesiasticall dignitie together with the King's gouuernemente thairof shall be turnid in contempte and beginne to euanishe in this kingdome, the kinges heirof shall not long prosper in thaire gouuerment and the monarchie shall fall to ruine, quhiche I praye god I maye neuer liue to see and so fairwell."[1]

When in due time the judges returned from the summer circuits, and, toward the end of September, resumed their duties on the bench at the opening of Michaelmas Term, one of the very first matters brought up was the prohibition issued to Fuller. In view of the importance attached to his attack on the Commission, the judges of the King's Bench took counsel upon the prohibition with the judges of the Common Pleas and with the Barons of the Exchequer. The practice of the King's Bench rendered such a writ valid to stay proceedings in the Commission only until an argument could be had before the bar of the court upon the respective rights of the two jurisdictions. Only two courses were properly open to the judges: they could uphold the prohibition and thus declare their sole right to adjudicate the case, which was, in fact, what Fuller wanted; or they could issue a consultation annulling the prohibition and giving the High Commission leave to proceed. The latter would practically be a confession that they had acted hastily in forbidding the Commission to proceed against Fuller. When opinions had been exchanged, it developed that the judges were divided: some wished to maintain the very letter of the prohibition; others wished to annul it altogether; but, in the end, after much argument, and after several propositions had been submitted in writing for settling the difficulty, they agreed to issue a consultation. It was a curious document, that writ of consultation, drawn up early in October, 1607.[2] In one sense it deprived the

[1] Hatfield MSS. 134, f. 126. Holograph. October 19, 1607. Dr. Gardiner gives this date (*History of England,* II, 39.) as "November 7." But the letter is plainly endorsed on the back in Cecil's own hand: "The K. to me, October 19, 1607."

[2] The consultation will be found in Latin in Lansdowne MSS. 1172, f. 97. The wording in the text is an attempt to render it freely in the

Commission of authority, in another it fully recognised the whole of its contentions. The Commission was authorised to proceed "with all due and proper speed according to your ecclesiastical authority against the schism, heresy, impious error or pernitious opinions of the aforesaid Nicholas Fuller." In truth, although these phrases seemed to deny power to proceed in the present instance against Fuller, who indeed was accused of slander and contempt and not of heresy and error, they nevertheless did sanction action by the Commission, for several charges concerning heresy and schism had been included (probably by chance) among the counts of the indictment. In any case, if the Commissioners were the sole legal interpreters of the language of the consultation, it would have been plain enough, from their statement, that Fuller's views were, to say the least, "pernicious opinions." The gist of the consultation contained therefore nothing to hinder the Commission's action.

Having finished the usual form of consultation, the judges added several sentences in the nature of explanations and qualifications. "Nor is there any question by us made, of the authority or validity of the letters patent to you and to others directed nor of the exposition of the statute of 1, Elizabeth, nor of certain scandals or other matters which, by the Common Law and the Statutes of this Realm of England, are to be punished or concluded." Technically, of course, these phrases were not part of the consultation and were merely declaratory of the opinions of the judges. The innuendo therefore in the last clause that Fuller could be tried only at common law, even for the slander of the High Commissioners,

legal English of the period. It was certainly issued late in September or early in October, before Fuller's conviction by the Commission (it must be borne in mind that he had been simply arraigned in July) and not, as Dr. Gardiner states, in November, after his conviction. Dr. Gardiner also treats the document printed in Coke's XII *Reports*, f. 41 as the actual consultation. In an article in the *English Historical Review* for October, 1903, the present writer has stated his reasons for regarding as highly suspicious anything in that volume of *Reports* which does not fully agree with the evidence from other sources. But in this case the document is so long and rambling and so devoid of legal form that it can hardly be credited as against the one in the Lansdowne MSS. It is not on the face of it a consultation, but an argument why the consultation should contain certain limiting clauses. There is no proof that it was more than a private memorandum of Coke's own ideas, and there is no reason at all to suppose it was ever meant to have legal effect. There is just enough similarity between it and the Lansdowne paper to make it reasonably certain that both refer to the same event.

was of no legal effect; and, if it had been, the two preceding clauses completely nullified it, inasmuch as they declared valid the Letters Patent and the Commissioners' exposition of the statute of 1, Elizabeth, both of which contained ample authority to try slanders of all descriptions, whether against the Commission or not.[1] In fact, the consultation contained so many mutually contradictory phrases, and so many antagonistic claims, that it could hardly be considered to have placed a limitation upon the Commission's powers. By refusing to support Fuller's ''appeal'' and thus assume jurisdiction of the case themselves, the judges had abandoned him to the discretion of the High Commission.

Despite the confused phrasing of the writ, the ecclesiastical authorities attempted to follow its very letter and spirit, in order to give Fuller and the judges themselves no cause for complaint. They therefore arraigned him for schism and erroneous opinions and probably on October 20 or 21 convicted him, fined him £200, and sentenced him to imprisonment during pleasure.[2]

But Fuller had by no means exhausted the resources of the common law, and found the judges ready to assist him in pushing the matter still further. His counsel applied to the King's Bench for a Habeas Corpus,[3] which should force the keeper of the prison where Fuller lay to produce him at the King's Bench bar and state his authority for detaining him. The Habeas Corpus, issued in the first week of November, raised a new question for the judges to decide: was the unquestionably regular process of commitment used by the High Commission legal? The argument over the prohibition had debated the respective rights of the Commission and the King's Bench to punish Fuller for his slander of the former court, which he had uttered in a pleading before the latter. Now, however, Fuller brought to the fore, the precise question he had already argued in the objectionable speeches which had first embroiled him with the Commission—the right of the court to commit him to prison at all. He made no charge that the process used was irregular, that he was committed for a crime for which others were not detained, or that the Commission possessed no such authority in its Letters Patent. He virtually declared it illegal and asked confirmation of his opinions from the King's Bench.

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[1] Just at this time, the common law courts were trying to draw all cases of slander before their own tribunals.

[2] XII, *Reports*, 44. This happened before November 14, because on that date Fuller's fine was granted to John Patten of the King's Closet. State Papers Domestic, Docquet, November 14, 1607. On October 19 the King wrote to Salisbury to bear in mind Fuller's Case (Hatfield MSS. 134 f. 126) and on October 23 Lake wrote to Salisbury that the King was ''exceedingly well pleased'' about the ''prohibition.'' (Hatfield MSS. 122, f. 150.) When Fuller's Case came up again it was on a Habeas Corpus, hence this trial would seem to have come on October 20 or 21.

[3] Dr. Gardiner here inserts the famous altercation between Coke and the King. This, however, seems to belong elsewhere. See infra, Book III, Chapter IX.

This movement brought him into collision with the State. Hitherto, James and Salisbury had been interested observers of the case, concerned lest it should take a dangerous turn. They were now perfectly satisfied that the affair had gone far enough, and felt that it was high time they took a hand in the matter, if they were to prevent the discrediting of the Commission by so "euill a uillaine" as Fuller. James considered his prerogative threatened and, in fact, there could be no question of the truth of his belief. Stripped of its legal technicality, Fuller's argument said nothing less than that the Letters Patent gave the Commission a power which the statute of 1 Elizabeth did not confer upon the King, and which, therefore, he could not delegate to a Commission. Both Elizabeth and James had issued such Letters Patent, and, if they had done so, as Fuller claimed, without authority either from their prerogative or from statute, they had committed a grave breach of the law, and, what was more, if the contention was true, the Crown did not possess an important ecclesiastical prerogative which it had long exercised. James was therefore literally right in asserting that his prerogative was at stake. While apparently arguing merely that the High Commission had illegally imprisoned one Nicholas Fuller, the lawyers would be, in reality, debating whether or not the King possessed the power to create such a High Commission as his Letters Patent of 1605 specifically sanctioned. It was James's steadfast opinion that "the absolute prerogative of the Crown" was "no subject for the tongue of a lawyer," nor was "lawful to be disputed."[1] He, therefore, directed Salisbury to take charge of the defence of "his honour," and see that no argument took place over his prerogative; Hobart, the Attorney General, was ordered to argue against Fuller in support of the High Commission, and to prevent any dispute over its legality or illegality.

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[1] *Works of James I,* (London, 1616) p. 550. The case was duly appreciated and followed outside the court. On November 22, William Walton met George Knight at Pauls: "Howe nowe Mr. Walton, said Knight, do you thinke to carry away the cause between you and Mr. Ponde in this manner from my Lorde of Canterburie round before the judges of the King's Bench . . . the Lord Archbyshopp I warrant you will bring the same therethence againe in spight of their teethes. . . . His Grace had allready committed one Fuller to the Fleete and so would them (i. e. the

On Tuesday, November 24, 1607, the warden of the Fleet Prison brought Fuller to the King's Bench bar as the Habeas Corpus required.[1] The court room was thronged with an interested audience, for the case had by this time attained a certain amount of notoriety. When the warden had presented the warrant for Fuller's commitment and when the document had been read, Fuller declared that he wished to except to it, "both in matter and forme." In the first place, he had not spoken the words with which it charged him: secondly, that, if he had, he uttered them merely by "way of an argument" for his client, a fact which he thought ought to be taken into account, and of which he found no mention in the return. It seemed essential to him, he said, that the return should state the truth and that it should do so in proper form. He therefore excepted to it as insufficient. Hobart, the Attorney General, argued on the other hand, that the King's Bench had no authority to examine the facts of the case, in order to determine whether or not they justified any action at all, for that court had recognised, in its own consultation, that it had no right to try the substance of the charge against Fuller, and therefore no jurisdiction to decide whether or not the facts of the case supported the warrant. If the warrant alleged a good *prima facie* cause of imprisonment and had been made out in due form, it was sufficient in law, he declared, to keep Fuller in the Fleet. In fact, unless it showed on its face that the Commission had proceeded against him in a manner forbidden by the consultation, the judges must declare it valid. He then compared the return with the consultation and showed beyond doubt that the two agreed. With this argument, which was in truth good law, the judges were satisfied, and remanded Fuller to prison. In their opinions, wrote Salisbury to James, they added "larg profeshions how much it became them in

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Judges of the King's Bench) if they would not grant a consultation." Walton's Deposition. State Papers Domestic, Jac. I, XXVIII, no. 94.

[1] Hatfield MSS. 124, f. 137 b, 138 a. Salisbury to the King. Holograph draft, corrected. This was the report sent off that evening to James, who was outside London, hunting.

duty to eschew any blemishe to such a commission,'' and declared that they believed he had uttered all the words charged against him, and that he ought to be punished for such an offence. Fuller was completely defeated, but he was not yet overwhelmed. He said that he had been without counsel to defend him and begged for a new hearing, where he might be privileged to have lawyers to speak on his behalf. After a good deal of hesitation, the judges granted the request, expressing however their surprise at his continued intractability and their hopes that, when he returned, he would make a complete submission, instead of aggravating his offence by continued obstinacy.

The judicial apprehension of further trouble from Fuller was shared by James and Salisbury, both of whom believed that too much consideration had already been shown so graceless a rogue. To them, the writs of Habeas Corpus to Ladd and Mansel, the prohibition and consultation, and then the Habeas Corpus to Fuller himself, seemed to point either to an opinion among the judges that the High Commission was illegal, or to the judges' desire to expand their jurisdiction regardless alike of the character of the cause they espoused or of the effect of their acts upon the welfare of the Church and the safety of the State. When, therefore, after refusing to maintain three such writs in succession, the judges allowed Fuller a new hearing and gave him, contrary to all common law precedent, the privilege of counsel, James was frankly puzzled. He strongly suspected them of some purpose of their own which boded ill to him and his prerogative, and which they would stick at nothing to accomplish. For the nonce, however, he found scant confirmation of his fears.

The second hearing took place on Thursday, November 26.[1] Quick to appreciate the legal situation, Fuller saw that he must attack not the substance but the form of the warrant whose validity was the present issue; and he was keen enough to direct his counsel to cling fast to their legal exception and say nothing about the illegality of the Commission or the substance of his case before that court. His lawyers therefore argued that the warrant, to be good, must show on its face that the Commission possessed from the King sufficient authority to fine and imprison Fuller. According to the return, the Commission had imprisoned Fuller because of schism and heresy and had left it to be assumed that it possessed sufficient authority for the action. Although there could be no doubt, continued the lawyers, that it had the authority, and although the judges themselves might know it, they could not take legal cognisance of it unless that fact were expressed in the return. With this argument, which was certainly specious, the judges were visibly impressed. In his reply, Hobart met the objection by stating, that the contents of royal letters patent and of the statutes of the realm were public and did not need to be pleaded specially in court or mentioned in every act performed under their authority, for it was part of the judges' duty to keep themselves informed of the contents of such documents. This argument won the day and the judges remanded Fuller to prison for good.

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[1] Our sole authority is again Salisbury to the King. Draft corrected by Salisbury himself. Hatfield MSS. 123, f. 59. November 28, 1607.

But they wove into their speeches various statements of political theory which, with Fuller's pamphlet later published, mark the case as important in the annals of English constitutional history. They declared that "they were one of the King's strongest armes," and dilated upon their own importance and dignity. They hoped, they said, that all men who had spoken disrespectfully of their authority would "learn and understand" that the temporal courts possessed a perfect right to grant prohibitions, and intended to continue issuing them whenever they saw fit. Their intention to grant them, in instances like Fuller's, was expressed in the declaration that all prohibitions issued in the past had been properly granted.

When the news reached James, who was hunting outside London, he was at once pleased and displeased. So satisfactory was the settlement of the case to him that he sent quite profuse thanks to all who had laboured to bring it about, especially to Chief Justice Coke of the Common Pleas, who had been playing the mediator between the Commission and the King's Bench. But he declared and "bownd it with an oath that the judges had don well for themselfes as well as for him for that he was resolued if they had don otherwise and mainteyned their Habeas Corpus he wold haue committed them. And uppon that point which your lo: mentioneth of their declaration that they wold grant prohibitions he spake angrily that by their leaves they should not use their libertie therein but be prescribed."[1]

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[1] Hatfield MSS. 123, f. 55. November 27, 1607. Lake to Salisbury, holograph; and Hatfield MSS. 123, f. 66, November 30, 1607, same to same.

Fuller returned to the Fleet Prison, and soon began to try what could be accomplished toward freeing himself by his own submissiveness and his friends' importunity. After the second hearing, he had intimated to Hobart while still in the court room, that "*if* he had offended" he was sorry and craved pardon, but was at once assured that such conditional submissions were of no avail, and that a complete retraction of his words, without "ifs" and reservations, was required. Within a week after his recommitment, he forwarded to the Archbishop a submission which seemed at the moment likely to satisfy all parties.[1] Further to prepossess the authorities in his favour, his wife journeyed down to Newmarket over the bad roads, to present a petition to James on her husband's behalf, which Lake and other officials persuaded her to redraft into less enigmatical shape. She presented the altered petition to James, just as he was starting out on the hunt, and he, in good humour at the prospect of his favourite sport, received it good-naturedly, remarking that he was glad Fuller was penitent.[2] The lady returned to London to importune Salisbury in the same manner.

Fuller himself was, however, the chief obstacle to his own freedom, for, after all, he refused to take the final submission required of him. Moreover, his wife and friends, for some inexplicable reason, secured from him a retraction of his first submission,[3] and then, as if they had not thereby placed him in sufficient jeopardy, proceeded with inexplicable stupidity or rashness, to publish, about the middle of December, some of his letters written since his confinement, and a pamphlet, which purported to be the very speech for which he had been fined and imprisoned by the High Commission. If they believed that these documents would start a wave of public opinion in his favour, which would compel the Government to release him, they totally miscalculated the number of adherents then in England in favour of Fuller's views, and failed to see the hopelessness of reaching them. In truth, they only placed him in greater danger, for, while no one gave serious attention to the pamphlet, the Government visited its wrath upon

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[1] Hatfield MSS. 123 f. 90. December 9, 1607. Holograph. Lake to Salisbury.

[2] Hatfield MSS. December 9, 1607. 123, f. 90. On December 10, Fuller's fine was taken from Patton, to whom it had been granted, apparently because it had been remitted. State Papers Domestic, Docquet, December 10, 1607.

[3] Chamberlain to Carleton. January 5, 1607-8, State Papers, Domestic. Jac. I, XXXI, f. 2.

Fuller. He insisted, however, that he knew nothing of the printing of the speech, and, after examining him thoroughly, the Attorney General concluded that he was telling the truth.[1] Then, to show his penitence, Fuller at once wrote to the Archbishop and to the Company of Stationers to urge them to suppress the pamphlet,[2] and further claimed (as was evident enough) that it was not the speech he delivered, but another he intended to use. However that may have been, the pamphlet stated on its title page, that it was the very speech for which he had been fined and imprisoned, but it contained none of the disrespectful words about the High Commission which had really caused his punishment, and added a great many highly offensive statements regarding the royal prerogative which it seems fairly certain he never uttered before either the High Commission or the King's Bench. In general, moreover, it portrayed Fuller as a learned and conservative lawyer, seeking truth and justice, and as a valiant defender of English liberty. In fact, it made him seem like a worthy and patriotic man oppressed by a tyrannical government, which he had provoked by revealing its misdeeds.

He was represented as declaring that "the lawes of England are the High Inheritance of the Realme by which both the King and the subjects are directed. Without lawes, there would be neither King nor inheritance in England, which lawes . . . are so fitted to this people and this people to them as it doth make a sweet harmonie in the government." The law, continued this remarkable document, which is equally important and equally a landmark whether Fuller wrote it or not, "admeasureth the King's prerogative so as it shall not extend to hurt the inheritance of the subjects. And the law doth restraine the liberall words of the King's grant for the benefit both of the King and the subjects and to the great happiness of the Realme, especially when the Judges are men of courage, fearing God, as is to be proved by many cases adiudged in these Courts of King's Bench and Common Pleas, which Courts are the principal preservers of this high inheritance of the law." The King might not dispense "with the common law nor alter the same . . . nor put the subjects from their inheritance of the law . . . which was always accompted one of the great blessings of this land, to have the law the meatyeard and the Judges the measures. For in all well governed commonwealths, Religion and Justice are the two principal pillars wherein the power of God appeareth." These phrases alone suffice to give this pamphlet and Fuller's case a place in English constitutional history, for these are among the very first enunciations, if not the first, of that great theory which Hakewill was to use so effectively in the case of Impositions in 1610, and which St. John was to render ever memorable in the great case of Ship Money in 1637.

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[1] Hobart to Salisbury. Hatfield MSS. 124, f. 81, undated. Dr. Gardiner places this letter in January, 1607-8, but it seems to belong here. Chamberlain says distinctly that Fuller's friends published several books in December, and Hobart speaks here of "any of the books" and later mentions twelve; whereas Whyte, on whose letter in Lodge, *Illustrations*, III, 344, Dr. Gardiner depended, mentions but one book.

[2] Fuller's Submission, Hatfield MSS. 124, f. 59.

Whatever may be its historical importance, it clearly was printed to give an entirely false view of Fuller, and of his treatment by the High Commission, for he was by no means innocent of reprehensible conduct; and the High Commission had not treated him with unusual severity. Indeed, in view of the provocation, Fuller was treated with much leniency. None of the letter writers of the time would have been surprised to have seen him "shrewdly handled," but he was allowed to pay his fine about December 30,[1] and, after some further trouble over the form of his submission, was released on January 8, 1607-8.[2] Soon after, a new book appeared "on the discipline of the Church" which the Government suspected emanated from him, and, therefore, January 20 found him a close prisoner of the Privy Council in the custody of the Dean of St. Paul's Cathedral.[3] Late in February or early in March, he drew up another submission[4] which was apparently satisfactory, for about April 10, he was released under bonds to secure his good behaviour, and licensed to practice at the bar till his case had been heard in the Star Chamber.[5] In July following the matter was not yet concluded, and in August was still dragging along.[6]

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[1] Chamberlain to Carleton. December 30, 1607, State Papers Domestic, James I, XXVIII, f. 128. Remitted December 10, the fine seems to have been reimposed after the appearance of his books.

[2] Chamberlain to Carleton, State Papers, Domestic, James I, XXXI, f. 4. January 8, 1607-8.

[3] Lodge, *Illustrations*, III, 255. Hatfield MSS. 124, f. 59.

[4] This is connected with the paper in Hatfield MSS. 124, f. 59.

[5] Additional MSS. 11,402, Abstract of Privy Council Register, under the date April 10, 1608. The original Register is lost.

[6] Notes by Bacon, July 25, 1608. James Spedding, *Life and Letters of Francis Bacon*, IV, 53; August 6, 1608; *Ibid.*, IV, 95.

The attack upon the High Commission had failed, and had failed largely because of Fuller's rashness and intemperate language. The courts had already decided cases against the High Commission on very similar pleas, but what Fuller and his friends wanted was a spectacular decision in a perfectly clear case that should settle the matter once for all; that should break the power of the Commission as an administrative arm of the Church; and thus rob the ecclesiastical arch of its keystone. By curious poetic justice, he had defeated himself. The judges had been willing enough to decide in his favour if they could have done so upon some decent legal grounds, but he continually forced the issue to an extreme, and abandoned the pleas that might have saved him. Had he put forth his original argument against the Commission as temperately and lucidly as it was stated in the published pamphlet, had he omitted his animadversions upon the bishops, and his views upon political theory, he would have forced them to give him a serious trial where the issue would have appeared on its merits, and would not have allowed the Commission to convict him for misdemeanours which involved no principle at all, required no ability to state, and could not be explained or denied, once they had been committed. His speech-making and letter writing, and months in jail, had not advanced his cause one whit, and had, in fact, hurt it by adding one more to the growing total of cases of "factious and seditious" Puritans

CHAPTER VI

RECONSTRUCTION IN SCOTLAND, 1606-1610

While the High Commission was struggling to punish Fuller Bancroft had been contending, in another capacity, with men who were, in their way, even more obstinate than he. James had enlisted the Archbishop's sagacity and administrative skill in the erection of Episcopacy in Scotland; to which the Presbyterian ministers had objected so vigorously that the King had summoned to London eight of the most prominent to explain their conduct. In the fall of the year 1606, they duly appeared and proceeded to debate with James and Bancroft, during the succeeding winter and spring, the complex problems of Scottish ecclesiastical administration and constitutional development, which had been ripening for at least ten years. There are few subjects more instructive and suggestive to the student of the ecclesiastical history of Bancroft's time, than the quarrels between James and the Kirk north of the Tweed. There appear similar types of men, the same forces, the identical theories of government and conduct which we have already been studying in England; but, in the sister kingdom, a different environment and the vast dissimilarity between the position of the Crown in England and of the Monarchy in Scotland, caused what was buried at London beneath the surface to be openly espoused at Edinburgh, with an arrogance and audacity only possible in men of the seventeenth century. Instead of viewing the forlorn attempt to erect within the Church, in the face of a powerful opposition from State and Church, forms of discipline entirely alien to it, we find a strife between a strong Presbyterian autocracy, already firmly entrenched, with a royal government made weak by the power of the local nobles, and by its inability to maintain the public peace among the quarrelsome northerners.

Thus, we have the extremely interesting and instructive spectacle of the Presbyterian party when the tables were turned. We left the English Puritans insisting that the Canons of 1604 must be confirmed by Parliament (that is, by the civil authority) before they could be binding upon any one; and we find the Scotch ministers declaring warmly that the vote of the Kirk needed no confirmation by King or assembly to bind every man in Scotland. To the English Puritan, the use of the penalties of excommunication for contumacy by the ecclesiastical courts, was contrary to the law of God, according to whose Word no such penalty could be countenanced; yet their Scotch brethren were declaring as firmly, in even more strident and insistent tones, that the God-given weapon of the clergy over the laity was the right of excommunication. Where the English disciplinarians were eager to relegate certain ecclesiastical offenses to the temporal courts, and insisted that no minister could be deprived of his right of appeal to them, the Scotch Presbyterians hotly contended, in the face of the King and all the powers of State, that the civil authority had no right to try a clergyman for any offence, until he had been convicted and degraded by the Kirk.

While the complete accuracy of these parallels is somewhat marred by the difference in attitude of the English and the Scotch toward the ordinary legal tribunals,—the English respecting their authority, while the Scotch ordinarily despised it,—the comparison is not without its value, and shows that circumstances do alter cases.

As their books amply demonstrate. both Bancroft and James were much influenced in their attitude toward the English Puritans, by the deeds of the latter's Scotch cousins. The history of Calvinism in Geneva and Scotland was sufficiently similar to lead any one, familiar with its course, to believe that in England the same ideas and doctrines were trying to express themselves in the same characteristic ways. The history of the Classis movement furnished English Churchmen with what they considered to be more than a foreboding of this development. Indeed, no one can hope to understand the attitude of the English Churchmen toward the English Disciplinarians without bearing in mind their experiences with Presbyterianism and its advocates north of the Tweed.

The quarrel between the King and the Kirk was of long standing, of great depth, and of nearly commensurate bitterness.[1] Under the minor points of dispute, about which the debate had raged, lay that most fundamental of all questions—who should rule in Scotland, the King or the ministers? The issue did not lie between a Kirk wholly independent of the State and a Kirk wholly dominated by the State. Neither James nor his clergy could conceive of a separation of theology and politics. The real question was, which of the two should hold the preponderating influence over the combined forces of Church and State. And each party started from the unassailable premise (in its own eyes) that, in its own ascendancy was enshrined the future hope of Scotland. What counsels could be better for a state to follow, demanded the ministers, than the commands of God? Who was so fit to interpret and deliver His Commands as the chosen ministers of His Word? James, on the other hand, considered that a theological training was not the best preparation for a negotiation with France or Spain, or for the quelling of a border feud. To his mind, the ministers, as men unskilled in worldly things, should accept the guidance of the King, whose business it was to understand such matters.

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[1] The chief authorities for this chapter are (a) *The Autobiography and Diary of Mr. James Melvill*, as edited from manuscripts in the Library of the Faculty of Advocates and the University of Edinburgh, by

The clash was irreconcilable: neither would yield. There are suggestive resemblances between the Emperor, barefooted in the snow at Canossa, and James humbled by the Edinburgh ministers in 1596; between the claims of the preachers to immunity from the civil tribunals and the pretensions of Thomas à Becket. Both parties were in the grip of forces they did not comprehend which had been gathering strength for centuries. Neither was at fault. There is something noble to us, in the staunchness with which each side maintained its position, but baseness, brutality, and bigotry are also plainly visible in their methods.

The issue, which Melvill and Bancroft were about to argue, was

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Robert Pitcairn, for the Wodrow Society (1842), 2 volumes. James Melvill was the nephew of the more famous Andrew, and the two were witnesses and participators in most of the events described. While undoubtedly biased and full of prejudice against episcopacy, it must be admitted that Melvill made a determined effort to be impartial, and has done justice to his enemies with a rare magnanimity. (b) *The History of the Kirk of Scotland*, by Mr. David Calderwood, edited from the original Manuscript by Rev. Thomas Thomson, for the Wodrow Society, Edinburgh, 1842-1849. Calderwood wrote shortly after 1620, was aided in collecting documents and letters by the General Assembly and by many influential individuals, and made a most valuable collection. His own comments are seldom of much value or authority. The best modern account is A. Lang's *History of Scotland*, II.

clearly outlined in 1596. The Second Book of Discipline declared: "The ministers exercise not the civil jurisdiction but teach the magistrate how it should be exercised according to the word;" and to the discipline of the Kirk, the magistrate shall "submit himself, if he transgresses in matters of conscience and religion." This might have been well enough, had not the preachers allowed themselves a very wide latitude indeed in deciding what fell within the catagory of "conscience and religion." Besides the right of instructing the magistrate in the duties of his office, and the privilege of punishing him "as a Christian and not as a King," if he should fail in their performance, the ministers declared themselves the ambassadors of our Blessed Lord, asserted that their sole instructions were found in the Scriptures, and that only for a breach of those commands could they be called to account under the civil laws. Of that breach of interpretation, only "the prophets," (the other ministers) could judge. The self-constituted Committee of Public Safety, composed of Commissioners of the Kirk, declared in 1596, that the preachers were "answerable" only to Christ, and were "not to be controlled or discharged by any other." Some few weeks previous to this declaration, Andrew Melvill, in an audience with James, had grasped the royal sleeve, very likely with no small vigour, and had told the angry King that he was "God's silly vassal." Two Kings reigned in Scotland, declared he, Christ and James, and Christ's deputies were the ministers of His Word, whose advice the King must follow far oftener than that of his "devilish and most pernicious" lay advisers. James never forgot that moment when he was rudely shaken by the stalwart professor,[1] as he also remembered for many a day the time when another preacher termed him "an irresolute ass."

Applying these principles, the clergy claimed the right to summon the Kirk Session and Assemblies, pass laws and promulgate them without the assent of the King, and even in the face of his commands. Likewise, they arrogated the right to enforce those laws themselves, for "the power of excommunication," wrote Melvill, to Beza in 1578,[2] "rested with the ministers alone; and civil penalties, according to the custom of our country, accompany the sentence." Their claims extended even to the right of call-

[1] Melvill, *Diary*, 370-371.

[2] M'Crie, *Life of Melvill*. I, 202.

ing upon the civil arm of the State to enforce the decision of the Kirk against the King himself. Bruce of Edinburgh even went so far, in an assembly convoked by the clergy in open opposition to the King's commands, as to order those present "to hold up their hands, vow and swear to defend the present state of religion *against all opponents whatsoever.*"[1]

The King's platform was also promulgated in 1596.[2] The preachers were not to treat of state affairs in their sermons; nor convoke the General Assembly of the Kirk without royal assent; nor attempt to enforce the acts of the Kirk until they had received his ratification. Further, they were not to try in Kirk Session cases properly assigned to the civil and criminal courts by the law of the land. James was fond of dialectics, and would have greatly liked to win the theological battle against the ministers, but even he appreciated the necessity of securing, somehow or other, the administrative control of the Kirk.

Two years after his accession to the English throne, occurred an incident which opened the way for a new attempt to introduce Episcopacy into Scotland. The "golden law" of 1592, on which Presbyterianism in Scotland then rested, had declared that the Kirk Assembly had a right to meet yearly, provided the King or his Commissioners were present just before its dissolution, to appoint a day for its next session.[3] An Assembly had been duly appointed to meet in the summer of 1605 at Aberdeen, but, shortly before the day set, James had forbidden its meeting; and, hearing that some nineteen ministers were assembling despite his commands, sent Straiton of Laureston to disperse them. The preachers were determined to hold the Assembly in order to preserve the chain of continuity; but the moderator of the last Assembly was not present, as he should have been, to open the new session, and the Royal Commissioner declared (and the preachers denied) that, the day before the meeting, he had commanded them by public proclamation to renounce their contemplated action. They did meet, however, chose a moderator, and then setting a day for the next session, quietly left Aberdeen.[4] James was furiously angry and ordered them tried by the Council; and so raised the real issue between himself and the Kirk, which was by no means

[1] Calderwood, *History*, V, 512.

[2] Melvill, *Diary*, 383-4; 412.

[3] *Acta Parliamentorum Scotorum*, III, 541.

[4] Calderwood, VI, 278-284.

the royal powers connected with the prorogation of general assemblies.

James was determined to obtain an influence in the affairs of the Kirk, and to this end, he desired to introduce bishops into Scotland. The idea of bishops was evidently not a discovery of his, nor yet of Richard Bancroft, nor of William Laud. Bishops were first established in Scotland, after the Reformation, in 1572 when James was seven years old, and while Bancroft was still tutoring lads at Cambridge for fellowship examinations. These "Tulchan Bishops," with incomes but with little power, had lasted till 1581, when they gave way before the rising power of the Kirk during the minority of James; had been restored to power in 1584; and were finally abolished in 1592 when Presbyterianism was firmly established. Then, after the stormy events of 1596 and the King's ultimate victory, he harked back to the old idea, and succeeded in 1599 in securing the appointment of a few bishops who were to be Lords of Parliament with full privileges, but who possessed not one penny of income and no jurisdiction. To the ministers, the King's attempts to prorogue assemblies and to secure power over them, were only preliminary steps to the introduction of the "devilish seed" of bishops. This was the situation when Bancroft approached the Scotch problem in 1608. Bishops there were, but without income or power; the Kirk and the King were at swords' points, nominally over the rights of assemblies, but in reality over the concealed issue of the attempt of the King to secure a controlling legal influence in the Kirk.

The attempt to punish the ministers for their conduct at Aberdeen produced another issue, which was also old and of grave importance. When summoned before the Privy Council for Scotland, they one and all denied that the Council possessed any jurisdiction over them or had any right to convict them of an ecclesiastical offence. Melvill had practically raised the same point in 1584; Black had declined the Council's jurisdiction in 1596 in precisely the same manner and for much the same reasons. James saw that the opposition must be crushed: if the ministers were not amenable to the Privy Council, they were freed from all restraint whatever and might do as they pleased. Of course, he failed to see that they refused to be tried by the Privy Council because they did not believe that their trial could possibly be impartial, and, for that very same reason, he was himself entirely unwilling to allow the case to go before the Synod of Fife. Neither side could trust the other, and there was no third party to whom they could appeal; whatever the decision was, one or the other would certainly dislike it. The King accused them of high treason for refusing the jurisdiction of the Council, and early in 1606 the case came up for trial.[1]

The Earl of Dunbar was sent to Scotland as Royal Commissioner to secure a conviction, and his doings are related by the Advocate General of Scotland, Sir Thomas Hamilton, with convincing naiveté. The Earl explained to the judges "the undoubted favour which they micht expect by doing thair dewtie," and the "most certane disgrace and puneisment" awaiting them if they did not support the King's contention. And, finding "the chief peril to consist in the want of an honest assise," he "was compelled to cause his own particular and private kinsmen and friends to make the most part of the jury." Mr. James Forbes, one of the accused, was not one whit behind him in his attempt to influence the jury by undue means instead of by evidence,[2] for his speech was not an appeal to the law, but "ane maist grave admonitioune, with horribill threatenings," of the judgment of God which would fall upon the jury if they decided against him and his brethren. He told at length the story "of the Oath and Covenant which Joshua and the people made with the Gibeonites, which, because Saul, King of Israel, did break and violate, long after his death the Lord forgot it not, but plagued the land in the days of David, till all the sons of posterity of Saul were taken and hanged." This he applied to the King, and thereon, "directing the admonitioun, and threitening most terribill, maide all the heireris (hearers) astonischit and their haires to stand!" "So take this to heart," he concluded, "as ye will be answerable to God in that dreadful day of judgment; to which we appeal if you wrongfully condemn us.'' The jury were so frightened, that, despite the fact that they were Dunbar's own relatives, he had much ado to drag from them a verdict of guilty, even by the majority which satisfied the Scotch law. Thus, the ministers were convicted and were exiled, departing by boat on a dark and rainy night, to the sound of the one hundred twenty-third Psalm, and the weeping of their friends on the shore.

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[1] Calderwood, VI, 374, ff.; Melvill, *Diary;* John Row, *History of the Kirk.* The long letter of Sir Thomas Hamilton to James, which is an excellent description of the trial, is printed in Beriah Botfield's *Original Letters Relating to the Ecclesiastical Affairs of Scotland,* I, 31-33. Most of the long quotations throughout this chapter have been rendered in modern English because sixteenth century Scotch is puzzling to most readers.

[2] Forbes's speech is given by Melvill, *Diary,* 624-5, and also by Calderwood, VI, 382-386; these accounts substantially agree, probably because the latter had full use of the former's *Diary,* and did not scruple to copy verbatim from it without acknowledgment.

The chief ministers vanquished, the Parliament, which met in July,[1] finally provided the bishops with incomes and estates, after a great deal of ''wire pulling'' among the nobles, the upshot of which was that the estates of the bishops were restored, on condition that a very considerable part be assigned to various temporal lords. In addition, the King was declared ''soverane monarch, over all persons, estats, and causes, both spirituall, and temporall,'' and an oath of allegiance, modelled on the Elizabethan oath of supremacy of 1559, was provided.[2] The bishops, who had votes in Parliament before, had now obtained incomes: whether jurisdiction and authority could be also provided remained to be seen. Melvill declared with scorn that they were ''the Prince's led horse;'' that ''inasmuch as he had made them they must bee at his direction to doe what liketh him.''[3] A diligent search fails to uncover any direct evidence that Bancroft, or any English churchman, was responsible for the base corruption of the Assise that convicted the ministers in 1606; for the ''wire pulling'' at the Parliaments and Assemblies of these years; or for the servility of the new bishops to their royal master. Bancroft's work was confined to originating the scheme by which Episcopacy was gradually established, and to the care of the administrative details which became necessary in connection with the appointment of the new officers, the management of their estates, and the extent of their powers. James Nicholson ''was now (1606) almost the onelie great conseller in all these maters'' in Scotland, declares

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[1] Calderwood, VI, 485-551.

[2] Calderwood, VI, 495.

[3] M'Crie, *Life of Melvill*, II, 215. Gladstanes, one of the Bishops, wrote August 31, 1612, to James: ''No estate can say that they are your Majesty's creatures, as we may say, so there is none whose standing is so slippery, when your Majesty shall frown, as we: for at your Majesty's nod, we must either stand or fall.'' See also M'Crie's *Life of Melvill*, II, 218 note.

Calderwood,[1] but we find him in close touch with Bancroft.[2]

Bancroft found plenty to occupy his time, for, toward the end of August, eight ministers arrived in response to the King's summons to appear and answer for their conduct and their opinions.[3] The head of the deputation was Andrew Melvill, "a bold, plain, free-speaking man, and of an hot and fiery spirit, sparing no flesh," as Row, who knew him, declared.[4] Melvill and Bancroft had previously disagreed anent the famous sermon of 1588, and the description of Scotland in Bancroft's *Dangerous Positions;* and the Scotchman, at least, had been nursing his wrath for a long time. He was the chief leader of the Presbyterians, although at that time he did not hold a pulpit, but was, instead, the head of Aberdeen University. With him came his nephew, James, and six other influential men. As soon as Bancroft learned of their arrival, he sent to invite them to stay at Lambeth; and the Archbishop of York, by a similar invitation, hastened to equal his courtesy; but the ministers said that they had come to wait upon the King and would go nowhere until they had seen him.[5] Saturday, September 19, they saw the King at Hampton Court immediately after dinner, and were graciously received and soon dismissed. Next day, by royal request, they listened to a sermon by Bishop Barlow (whose account of the Hampton Court Conference had already prejudiced them against him), upon the "Antiquitie and Superioritie of Bishops,"[6] for the King was determined to leave no stone unturned to accomplish their conversion. After dwelling on the good that bishops "had done, did and might doe in the Church of God," Barlow illustrated his discourse by a lengthy account of the life and services of the present Archbishop, whom he praised as an embodiment of the true Christian minister. This reference roused Melvill's ire, and he forthwith composed a Latin epigram, whose pith was contained in its last line, "Did Barlo paint a pastor or a wolf that does devoure?''[1] Next day, the King received them in private[2] and said that he had called them to explain their conduct in regard to the pretended assembly at Aberdeen, and to confer about the manner in which ''an orderly and peaceable'' General Assembly could be held, ''to set all things in quietness and good order.'' James Melvill spoke for the eight ministers, and after some complimentary words addressed to the King, asked for time to consider an answer. Some further informal conversation on various points followed, and they were at last dismissed in good humour. Next day, they heard another sermon, this time upon ''Obedience;'' saw James touch children to cure the ''King's evil,'' and dined in one of the small rooms near the King's apartments, where they agreed upon their answers to the two points propounded on the previous day.

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[1] Calderwood, VI, 593.

[2] Bancroft to James I, June 26, 1606.

Botfield's *Original Letters relating to the Ecclesiastical Affairs of Scotland,* I, 54-55. This spelling can hardly be Bancroft's own. We have here probably a copy of the original made by a Scotchman. It must be confessed that the direct evidence of Bancroft's connection with Scotch Episcopacy is scanty, and that our best evidence comes from the statements of the ministers that he and the Earl of Dunbar were responsible for its establishment.

[3] Calderwood, VI, 559.

[4] Row, *Historie of the Kirk of Scotland,* 285.

[5] Calderwood, VI, 559.

[6] Calderwood, VI, 567.

James received them[3] in the midst of an assembly of the bishops and chief nobles, both English and Scotch, with Bancroft in the post of honour at his right, and Prince Henry on his left. The King, as usual, opened the meeting with a speech, and then asked the Scotch nobles and bishops whether they considered the Assembly at Aberdeen lawful and the proceedings of the ministers justifiable. They all replied in the negative. Then James turned to Andrew Melvill and asked his opinion, who, says his nephew's account, spoke ''all his mind in his own manner, roundly, soundly, fully, freely, fervently, almost the space of an hour,'' and refused in the end to pass judgment on the Assembly. The others followed to the same effect, speaking, says Calderwood,[4] on their knees before the King, but speaking ''freely, to the admiration of the English.'' Then Andrew Melvill ''brake out in his owne manner,'' declared the ministers entirely innocent of any crime, upbraided Sir Thomas Hamilton, the Lord Advocate, for his favour to the Papists, alluding to him as *Κατήγορος τῶν ἀδελφῶν.* '' What is yon he says,'' exclaimed James to Bancroft. ''I thinke he is calling him out of the Revelatioun, the Antichrist; nay, by God, he calleth him the verie devill." Up rose the King and left the room, with a curt "God be with you, Sirs."[1]

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[1] Row, *Historie of the Kirk of Scotland,* 236. The poem as a whole is too coarse to be reprinted. When the sermon was printed the passage about Bancroft was omitted.

[2] Melvill. 654. It should be remembered that Melvill was present at all of these events.

[3] Calderwood, VI, 572. Melvill, 658, ff.

[4] Calderwood, VI, 576.

A few days later, Bishop Andrews levelled at the ministers one of his brilliant sermons[2] and on September 29 Andrew and James Melvill attended a celebration of the feast of St. Michael, at St. George's Chapel, Windsor, on which occasion Andrew composed a celebrated epigram for which he later was called to account.[3]

The four sermons preached to the Scotchmen had made no visible impression, and Bancroft essayed, on October 6, to accomplish, by private expostulation and tact, what the public arguments had not compassed.[4] Instead of trying to shake the convictions of the Melvills, he meant to see whether or not Scott and Watson would not weaken when conferred with privately at Lambeth. He asked them whether they had found any authority in the ancients to prove that the name "Presbyter" was given to any one who did not preach and administer the sacraments, or that the name of "bishop" was allotted in the Fathers to any who had not superiority over the presbyters and the rest of the clergy, or if they ever read of a presbytery that was not subordinate to a bishop. But, acording to their own accounts, he derived so little satisfaction from them that he renounced his intention of conferring with their brethren. Toward the middle of November, the eight were put in confinement at the houses of different bishops, whose conversation and example, it was hoped, would soften the hearts of the recalcitrant Scotchmen.

About this time Melvill's epigram, comparing the English service to that of Rome, came to the King's knowledge. The offender was summoned on November 30, 1606, before the English Privy Council, where in the King's absence Bancroft presided.[5] He ordered Melvill to kneel, as was customary, and when he refused bade some of the officers force him into that posture. Melvill, thus held down, stretched his hands passionately to heaven, and prayed "To thee, O Lord, I make my moane," and, when the pressure was removed, sprang to his feet.[6] After being several times forced to his knees only to rise at once, Bancroft motioned to the attendants to allow him to speak standing. He confessed he had written the verses, being moved with indignation "to see such vanity and superstition in a Christian Reformed Church." When Bancroft attempted to explain why the verses were disliked, the angry minister "took occasion plainly in his face. before the Council, to tell him all his mind, which burst out as fire inclosed by water." He charged him with the "corruptions and vanities and superstitions" he had introduced into England in the profanation of the Sabbath; the "silencing and imprisoning and bearing down of the true and faithful preachers of the Word of God; of setting up and holding up the Antichristian Hierarchy and popish ceremonies." Then, striding up to the astonished prelate, he grasped his white lawn sleeves and shook them "freely and roundly," and no doubt the prelate with them, shouting out that they were "Romish Rags and a part of the Beast's mark." He went on to say that if Bancroft was the author of a book called "Scotizing Genevating Discipline."[1] which he pulled out of his bosom and shook in the Archbishop's face, he esteemed him "the capital enemy of all Reformed churches in Europe" and would so declare him while a drop of blood remained in his veins. He was grieved to his heart's core to know that such a man possessed the King's ear, and sat so high in the honourable Privy Council of England. Then, he turned upon Barlow with no less violence, enumerated the "horribill speiches" in his account of the Hampton Court Conference, and, at last, every possible interruption proving futile to check the flood of invective, he was "put forth in a place by himself."

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[1] Spotiswood in his *History of the Church*, and Calderwood give the Greek, as Melvill does not.

[2] Melvill, 663.

[3] Melvill, 664.

[4] Calderwood, VI, 588.

[5] Calderwood, VI, 597. Melvill, 678, ff.

[6] Row, 285, gives this, which seems probable enough. Melvill, and Calderwood, who followed him, omit it, as was natural enough.

When James Melvill, who had been waiting outside, appeared, Bancroft[2] praised him for his "gravity, learning, modest behaviour and christian carriage," advising him so to continue. The Scotchman denied that he had blamed the King in his letter to his friends in Scotland; and claimed that what he had sent was only a simple narrative of events. He acknowledged that his uncle, Andrew, had written the verses, but declared that they had been shown to no one. Robert Wallace, his companion, said much the same. All three were then called in together, and after a long speech by Ellesmere, the Lord Chancellor, Andrew was ordered into the custody of the Dean of St. Paul's Cathedral: and the others, left at liberty, were warned to be discreet in writing and talking.

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[1] One of the sub-titles of the *Dangerous Positions* which was sometimes thus referred to. See Fuller, Book IX, 195.

[2] Melvill says that Ellesmere, the Lord Chancellor, addressed him; Calderwood follows Melvill: but Row, *History of the Kirk of Scotland,* 237, says that Bancroft remained in the chair. Either may be correct but it seems unlikely that Bancroft should have resigned the chair or should have been deposed because of Melvill's outburst. It seems probable enough that it was an attempt by the younger Melvill to discredit him.

There met at Linlithgow, in the following month, an assembly of ministers, which, before it dissolved, declared itself a lawful General Assembly, and at last gave the bishops a position in the Kirk.[1] Under the pretence of the better execution of the laws against the Catholics, every presbytery was to have a "constant moderator," who would continue to execute the law when the presbytery was not in session. Each bishop, already invested with title and estates, was to be the constant moderator of his presbytery; and where there was no bishop, the new officer should be elected by that body itself. The constant moderators were to be *ex officio* members of the General Assembly, and the bishops were to be also moderators of the provincial synods. The bishops, having acquired a title in 1599, and an income in July, 1606, now received in December, 1606, a legitimate connection with the Kirk.

Great was the outcry from the presbyteries when the fact became generally known. Many declared that the body at Linlithgow was not a lawful General Assembly; that the delegates had no authority from their presbyteries to conclude anything at all; and that the sections of the Act making the constant moderators *ex officio* members of the General Assembly, and appointing the bishops to the moderatorship of the provincial synods, had been interpolated by royal command, after the Assembly had been dissolved. For these and many similar reasons, the royal commissioners met with general opposition when they attempted to install the new officers, whom one writer stigmatised as "the little thieves entering at the narrow windows to open the doors for the great thieves."[2] Still the majority of the presbyteries yielded: it was in the provincial synods that the real struggle took place.

At Perth, the synod instructed the old moderator to call the roll, so that voting for a new presiding officer could proceed.[1] The first man voted for Henry Livingston, and not for the bishop, whereat the comptroller, Lord Scone, ''raged'' and attempted to snatch the list of names. But, taking the book in his left hand, with his right the dominie forced the nobleman back into his chair and held him there, while he read all the names and thus elected Livingston as moderator. Lord Scone dared the new official to take his place, and so, disregarding the chair, Livingston stepped to the middle of the table and proceeded to open the synod with prayer. The comptroller ''in a great rage'' stamped and cursed, and ''Mr. Henrie went forward in prayer.'' Whereupon the angry noble overturned the table upon the kneeling minister, who never stirred, but ''besought the Lord to be avenged upon the reproache and blasphemie of his great name and contempt of his glorie, so stamped under foote by profane men.'' Meanwhile, the comptroller, ''like a mad man,'' paced the floor, till, worn out at last, ''he removed and walked in the kirk beside.'' The Bishop of St. Andrews, fearing a similar scene at Fife, issued letters forbidding the meeting of the synod. Some of the ministers obeyed; and those that came were not allowed to enter the town, but they finally convened the synod on the damp sands of the seashore and ''spent two hours in reasoning,'' ''the rain pouring upon them.''[2]

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[1] Calderwood, VI, 613, at 616, and 624.

[2] Calderwood, VII, 2, and 50, for other denunciations.

Meanwhile, on March 7, 1606-7, Bancroft had been experiencing the same resolution in the Scotch ministers still detained at London. The latter had been assigned to residence with the various bishops, had objected strenuously to the order, and had at last petitioned for their release. The Privy Council requested Bancroft to deal with them. The Archbishop sent for two[3] and made every effort to disarm their prejudices and quiet their apprehensions. Even the Scots themselves, deeply as they hated the bishops and convinced, as they were, that Bancroft was the author of the scheme for installing them in Scotland, were compelled to admit his unfailing gentleness and courtesy. He received them alone and at once laid aside his clerical cap, which he knew was offensive to them. Then, "with great reverence," he explained, "sometimes merrily and sometimes gravely," that, inasmuch as the King was not yet willing to dismiss them and had desired to have them well entertained in the meantime, he had directed several of the bishops to see that they were cared for as befitted men of their station. The messengers sent to them were not, as they supposed, pursuivants to arrest them, but attendants of the Council to guide them to the abodes of their new hosts. If the servants had been rude or indiscreet, or if they feared that the bishops would not "lovingly receive" them and treat them "kindly and courteously," they ought to inform him; he would see it remedied at once and be responsible for the future.

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[1] Calderwood, VI, 651-652; see also on Synod of Fife, 674, and the Earl of Abercorne to James I, August 26, 1607, in Botfield's *Original Letters*, I, 104.

[2] Calderwood, VI, 658.

[3] This is Melvill's account and certainly is a remarkable testimonial to the impartiality and fairness with which he wrote, but it may also be added that if Bancroft had not displayed remarkable tact and courtesy, Melvill would not have said as much about it as he has.

They replied that they could never repay such courtesy except by their prayers; but, seeing that no insult was worse than compulsory courtesy, they begged to be allowed to stay as long as the King wished at their own expense, as they had done for some months (which was not true),[1] and not to trouble the bishops, to whom they could not be pleasant guests and whom they could not find in turn congenial hosts. They were men who had honest houses and tables of their own, and were averse to risking their health by giving up their accustomed diet. "You speak truth," replied Bancroft, "like honest men as you are, and I do think, my brother, that the bishops would have little pleasure of you, except to pleasure the King's Majesty: for our custom is, after our serious matters, to refresh ourselves an hour or two with cards or other games after meals, and you are more precise:[2] but it were good the King should be satisfied to further his Royal endeavor to unite us together in one Kirk and Policy." "We do think the same," replied Melvill, "so that the ground of union, which is the truth of God's word, and fundamental laws of equity and policy be kept; but where a Church and kingdom is solidly and of long standing built on these, it is dangerous to seek an alteration; and there is no Union can be made to stand sure without that." "I know your meaning, Mr. Melvill," replied the Archbishop, "and we will not reason that matter: but I am sure we do both uphold and keep the true ground of religion and are brethren in Christ; and so should behave ourselves one toward another. Our difference is only in the governing of the Church and some ceremonies; but I understand, since you are come from Scotland, your Kirk is almost brought to be one with ours in that also: for I am certified that there are constant moderators appointed in your General Assemblies, Synods and Presbyteries, even as I am highest under the King in this Church, and yet am nothing above the rest of my brethren, the Bishops, but in pain and travail; so that I was in a better estate when I was but Richard Bancroft; even as a Standing Moderator of that General Assembly, or as Master Patrick Galloway,[1] or such others are in Scotland; and in every Province or Diocese there is a Bishop, a Moderator of a Chapter or a Presbytery, answerable all to the King." Upon this, William Scott, began "a wise and solid conference and discourse" with plentiful mention of men's duty to Christ and a good conscience, declaring that for them to yield to the King in Scotland "would prove nothing else but the very banishing of the gospell, and the drawing down of God's curse and wrath on them all, King and subjects."[2]

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[1] In July 1606 those who came to England received £2666, 13 s., 4d., expense money, as the Treasurer's accounts of Scotland testify, and in addition, the King continued to Andrew Melvill and George Young their pensions out of the bishopric of St. Andrew amounting to £2000. See Botfield, *Original Letters*, I, xxv.

[2] This may be true, but after all, we have only the authority of Bancroft's bitter enemy for it.

Bancroft saw plainly that nothing was to be gained from a theological disputation and realised that the moment had come to close the interview. So, smiling good-humoredly, he tapped Scott on the arm and said, "Tush, man! Take here a cup of good sack." He filled the cup himself and held the napkin while they both drank. "So," concluded Melvill, "after many good words and fair offers of all he could do at the King's hand for us to obtain our liberty, he sent us away." Bancroft kept his word and saw to it that nothing more was said to them about living with the bishops. And it should be remembered that this pleasant picture of Bancroft was drawn by one who hated him as much as he did any man in the island of Great Britain.

In the summer of 1607, after Melvill's tirade against Bancroft in the Privy Council, the scene of activity in the introduction of Episcopacy into Scotland, shifted from England to the North, whither Melvill's companions speedily betook themselves, leaving him perforce in the Tower. During the year 1607 and the year following, the work progressed of reducing the recalcitrant presbyteries and synods, and of punishing the most obstinate and prominent of the ministers. Under Balmerino's direction,[1] the Privy Council had interfered constantly with the work of the presbyteries and Kirk courts, seeking to break down if possible the idea that these bodies alone could rightfully deal in ecclesiastical matters.[2] The bishops, armed with special royal commissions, had been actively visiting the most stubborn districts, where, by a liberal bestowal of threats and censures, they had created the impression that it was well to yield to the royal wishes, at the same time that they had insinuated that the changes were not of sufficient importance to quarrel over.[3]

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[1] He had been in 1603 and 1604 the agent of the Scotch Presbyteries at the English Court to help their English cousins.

[2] Row. *Historie of the Kirk*, 233.

At the General Assembly at Linlithgow in 1608, the Earl of Dunbar carefully developed the one point of agreement between the bishops and the ministers—the execution of the penal laws against the Catholics,—and succeeded, in view of the strenuous proceedings contemplated against the latter, in postponing till 1610 a discussion of the real difficulties between the old ministers and the new officers. But the great step was taken in the Parliament of 1609, which "restored and redintegrated the archibischoppis and bischoppis of this realme to thair former authoritie, dignitie, prerogative, privileges, and jurisdictioun." The ministers were disgusted and railed publicly from their pulpits against "these craftie tods, and filthie dogs and swyne,"[4] "these Judasses, sonnes of perdition, who for money have betrayed Christ and His Kingdom."[5] But the bishops were there none the less. Meanwhile, the Privy Council had instituted a searching inquiry into the property of the old bishoprics, with a view to seeing how much could be restored.[6] In November, 1609, the pulpits of Edinburgh were declared open at whatever time they chose to all bishops who wished to preach in them; and to the further scandal of the "godly," Christmas was kept at Edinburgh with feasting and holiday revels, for the first time in many years.[7] Spotiswood, the Archbishop of Glasgow, was made a Lord of the Session, the supreme judicial tribunal of Scotland; and the judges and bishops were all ordered to wear gowns of a new pattern selected by the King himself and sent down from London. At the opening of February term, 1610, they all paraded solemnly through the High Street before the indignant gaze of a disapproving populace. But not a word was spoken nor a stone thrown.

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[1] Bancroft to James, October 12, 1607. Botfield's *Original Letters*, I, 117.

[2] *Privy Council Register for Scotland*, VIII, 66, 82, 92, 328, 330, 364, 381, 425, 813.

[3] *Privy Council Register*, VII, 103, 126.

[4] Calderwood, VII, 2.

[5] Calderwood, VII, 50.

[6] *Privy Council Register*, VIII, 600.

[7] Calderwood, VII, 52.

In that same month, two High Commissions were created for Scotland on the English model, but with comparatively slight powers.[1] It was hoped that the inclusion of nearly every important minister in each province in the list of Commissioners would disarm the opposition, and make the court after all only the local presbytery acting with the bishop under a royal commission. Actually, nothing was to be changed; but if, by such means, the consent of the Kirk could be secured to the existence of the Commission, the bishops and the King would have gained large residual powers which, on occasion, would prove to be important. It was the right to interfere at crucial moments, rather than the control of the ordinary administration of the Kirk, that James was so eager to acquire. Nevertheless, disguise it as they might, the fact remained that the bishops had at last received judicial powers to punish those "whom they hold anie way to be scandalous," by excommunication, or by "fyne at their discretiouns, imprisoun, or warde." By the establishment of the High Commission, Episcopacy was at last made an institution with a right of its own to exist. Yet, powerful as was the Commission compared to the authority which the bishops had formerly possessed, it was only a shadow of its English prototype, and claimed only a tithe of the powers which the Kirk courts actually exercised.

Then in May, 1610, at the General Assembly at St. Andrews, the work was finally consummated, by securing the assent of the Kirk to the new episcopal powers.[2] Without much doubt, the result was partly obtained by bribery and other undue influence, but much was due to the presence in force of the northern and western clergy, who had very little sympathy with the southern presbyteries. For many years the General Assembly had been held in such places that very few of the northern and western clergy could come, so that Fife, Perth, and the Lothians practically had ruled the Kirk. Aware of this fact, Dunbar had taken particular care to have a full representation from the neglected presbyteries, who revenged themselves royally on their brethren by voting to approve Episcopacy. The Assembly of Aberdeen of 1605 was declared unlawful, and, in place of the old assertion of the right of the General Assembly to meet each year, the King was begged to call one yearly. The moderatorship of the diocesan synod was conceded to the bishop; all presentations to livings were to be hereafter directed to him, though the fitness of each candidate should be certified by his own presbytery; *if, on further trial,* the bishop *was satisfied with his learning,* he should admit him with the assistance of the ministry of the district. No one should be excommunicated without the bishop's consent; deposition should be performed by the bishop, assisted by the ministers; visitations were to be held by the bishop or his delegate; the provincial assemblies became diocesan assemblies, and the term "presbytery" was to be discountenanced.

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[1] Given in full in Calderwood, VII, 57-62. See also *Privy Council Register*, VIII, 417-20. Apparently each archbishop could summon only within his own province, and each bishop within his own diocese. The quorum of those, one of whom must be present in order to make proceedings valid, was large; and the small quorum was made five, as in the English Commission of 1611.

[2] Documents are given at great length by Calderwood, VII, 99, who, in common with the leading ministers, regarded this session as a national calamity.

Thus, bishops were at last established in Scotland. Yet their authority, even as ratified by the Assembly of St. Andrews, existed rather in name than in fact. Bishops there were, but no true Episcopacy. The bishop became a useful and necessary part of the legal machinery of the Kirk as already established, but he never became indispensable and never was endowed with independent authority and initiative, for the real power still rested, as it had ever since 1592, with the synods and presbyteries. Bancroft intuitively realised how far it would be safe to go; had proceeded little by little and had been careful to end well within bounds. The bishops he instituted performed the functions which had been previously allotted to temporary officers elected by the presbytery, and became permanent chairmen of the Church assemblies and courts, and permanent executive officers to carry out the orders and sentences which had been agreed upon. Creed, doctrine, the form of worship, the church laws, the method of discipline, Bancroft was most careful to leave intact. The bishops were meant to give the King control over the existing organisation, not to reconstruct the Scotch Kirk; and they supplanted, not the Kirk nor any part of its organisation, but the small self-chosen and self-perpetuating body of ministers, headed by the Melvills, who had hitherto been in control. The nominal supremacy had been transferred from those, who had obtained it by process of natural selection, to a body of officials appointed by the Crown. Furthermore, Bancroft appointed to bishoprics all of the old leaders who would accept office, being well aware that the obstinate would never be willing to soil themselves, as they said, "with the pollution."

Nor was this influence of the State in the affairs of the Kirk,—it can hardly be called control,—necessarily an evil. The old leaders had so manipulated the assembly that their own districts should always be in the ascendency, from the physical inability of the clergy of the North and West to travel so far; now, the bishops assured every part of the kingdom of at least one influential representative who would make its wants known. The power was vested in the Crown and bishops; and fettered, as it was, by a strong public opinion, was even less likely to work injustice than the uncontrolled authority of the old set of leaders whom Melvill had drawn about him. In reality, James had been at war with them rather than with the Kirk as a whole. He believed, as firmly and sincerely, that their influence was bad for the Scotch nation. as they, honestly and conscientiously, were convinced of the contrary. Whatever may have been the personal faults of the new bishops (and they were many), whatever may have been the injustice of imposing them upon the Kirk, whatever were the iniquities by which they were installed, certainly they did, in great measure, end the violent quarrels of Church and State in Scotland.

Bancroft's compromise worked well for twenty-seven years; and then was ruined through the attempts of Laud to improve it. He discovered one day, that the bishops north of the Tweed were, after all, only the permanent executive officers of a Presbyterian Kirk, administering the laws and rules of discipline passed by the presbyteries, and sanctioning a regular nonconformist conventicle. To Laud, bishops could exist only in connection with a ritual, a prayer book, and canons duly approved by Convocation. In short, to him there could be no bishops without Episcopacy. He set himself to remedy so serious a defect—and put an end to Episcopacy in Scotland for ever. He failed in Scotland, as he did in England, because he could not understand the peculiar compromise which Bancroft had erected with extraordinary care and difficulty.

CHAPTER VII

THE OATH OF ALLEGIANCE ACCEPTED

Years before the oath of allegiance had been thought of, while the Jesuits were at the climax of their power, Father Creighton had written to Father Parsons, anent the latter's supporting the succession of the Spanish Infanta to the English throne, "there is a French proverbe, you cannot catch a hare by beating a drum." Parsons had been industriously sounding the call to arms for years; and now, at the great crisis of the Jesuit fortunes, began to realise that the English Catholics had taken fright and left his camp. The war was on; the seculars had come to terms with the English Government; and it now remained to be seen whether Parsons could, after all, marshall the rank and file of the English lay Catholics at the beat of the drum. If the majority of the laity took the oath of allegiance, the Jesuits were defeated and the actual control of the Catholic Church in England would pass into the hands of the seculars. In reality, the organisation of that time was so loose as to be democratic: the men who received the popular support would rule, and would, in the end, be accepted at Rome, where conversions and tangible results were most favourably regarded. As soon as it became definitely certain that the Government would favour essential toleration, and that the laity would accept it, an episcopal organisation of the regular model would very likely be instituted.

Parliament had been prorogued on May 27, 1606; and, in accordance with Bancroft's ideas, no immediate steps to enforce the new laws were taken, in order to give the priests time to consult with one another and arrive at some definite decision as to their attitude. They were fully alive to the situation; and, when Mush arrived in London early in June, he found a number of his comrades already assembled and much perplexed about the oath.[1] Some thought it altogether inadmissible: others went so far as to declare, on the authority of Azorus, that the taking of it and occasional attendance at church were legal. Heborne had visited the priests in the Newgate prison to urge them to accept the oath; and, according to Jesuit accounts, was not successful. Wright and others were openly dealing with Salisbury.[1] Blackwell, the Archpriest, who, shortly before the oath was passed by Parliament, had inveighed against it, now had veered around and brought all his authority to bear in its favour. Many conferences and a great deal of argument only produced *"multas limitationes et subterfugia."*

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[1] Tierney, IV, cxxxvi. Mush's own account, July 11, 1606, on which these paragraphs have been based. It seems as trustworthy as any information we could have. Father Blount's account substantially agrees with it. Foley, *Records*, I, 64.

Mush, with the Jesuits, Holtby and Preston, stood out against the Archpriest and besought him either to send two envoys to Rome to obtain a decision from the Pope; or at least to delegate two priests to confer with two Jesuits and two Benedictines, in order to agree upon some prudent and uniform course to which, once chosen, they should all adhere firmly. (*qua aliquid prudenter et uniformi consensu concludi posset.*) Blackwell plead his own danger as an excuse for taking no action, to which they retorted that he was in no greater peril than the rest of them, who were at that moment equally liable to arrest, with a probable exile or death to follow. No doubt, this reticence of the Archpriest in regard to an appeal to Rome or to the Jesuits arose from his knowledge or belief, that Bancroft was anxious to know what the Catholics would do without papal sanction, or in the face of possible disapprobation. Further, however servile the Archpriest had been to the Jesuits, he was not without a very real notion of the power Parsons held at Rome, and of the difficulty of reaching the Pope except with his consent; and he knew it was distinctly improbable that either Parsons, or the Jesuits in England, would in any way countenance such an oath. Until their victory was won, the seculars had little to hope from Rome; and none knew it better than Blackwell. The Archpriest, therefore, returned to the original proposition and declared (*tenuit quòd absolutè*) that the oath of allegiance could safely be taken. The opposition was far from being convinced; and finally, after much difficulty, Blackwell met in conference, Holtby, Garnet's successor as head of the Jesuits then in England, his colleague, Preston, Mush of the Northern Catholics, Colleton of the Southern clergy, Bishop, who had been in such close touch with Bancroft during the appeal of 1602, and Broughton. Blackwell said that he did not believe that his Holiness could, in the present state of affairs, actually depose the King, but could only declare him deposed; and therefore to swear that the Pope possessed no power to do what he manifestly could not accomplish, was not unlawful. Bishop and Broughton agreed with him; and, on the other side, Mush[1] and the two Jesuits ranged themselves, insisting that it was a very dangerous doctrine that the Pope possessed only such authority as he could effectively execute. What was to become of the papal supremacy, if tangible evidence of the conclusiveness of papal decisions were to be demanded?

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[1] Stonyhurst MSS. Anglia, A, VI, f. 293. Blount to Parsons, August 1, (July ?) 1606. Nothing had been done at this time to enforce the law, for Blount says: "The state of us here is as it was, no residence lost save Mr. Abbingtons, whoe yett remayneth prisoner." Abbington was the man who had housed Garnet. Rumours of all sorts were current. A proclamation was issued April 12, 1606, to contradict a story that an accident had befallen the King and all the people had been called to arms. Rymer, *Foedera*, XVI, 645.

The deliberations at the conference came to precisely the same end as had the earlier discussions among the priests: nothing was decided at all and a dangerous split seemed to be opening in the secular ranks, which in fact was precisely what the Jesuits were hoping to enlarge. Blackwell and his adherents wished to inform the people and lower clergy that the Archpriest had decided in favour of the new oath. Mush and the Jesuits, on the other hand, said deprecatingly, that they wished to create no schism and would refer the whole question to the Pope; and, with a graciousness not wholly devoid of humour, inasmuch as they could not possibly hinder the Catholics from following the Archpriest if they chose, gave them permission to espouse whichever side they preferred. But every attempt to keep Blackwell's decision from the clergy until some definite word could be obtained from Rome was fruitless; and the gentry and laity who had been in London, attending the Trinity session of the law courts, went home bursting with the great news that the new oath could be properly taken by Catholics. In a short time, therefore, the decision had been spread far and wide as quickly as was possible in those days of bad communication.

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[1] Mush insisted afterward, in 1611, "I ever condemned the whole oath." Tierney, IV, clxxviii.

Doubtless, Bancroft was regularly informed by Bishop, as well as by his spies, of the progress of these discussions and soon saw that the leaven was working. The right of the King under the law to confiscate property and collect fines, would, the Archbishop well knew, be so powerful an incentive to the laity in favour of taking the oath, that the only practical obstacle would be the decision of their spiritual advisers against it as a thing perilous to their salvation. To maintain the show of enforcing the laws against the Catholics as a whole, and to be ready to deal sharply with the refractory, a proclamation appeared on July 10, the last day of Trinity term and just before the long summer assizes, ordering all Jesuits and seminary priests to leave England before August first; and offering every facility of departure both to those in prison and to those at large.[1] The proclamation, with a mildness too often overlooked, declared that although the Gunpowder Treason had amply justified the new laws and their rigid execution, ''the supreme dispensation of clemency and moderation of the severity of our laws is likewise proper to us to use, when we shall find it reasonable.'' It promulgated the royal intention of ''renewing some course of lenity against some particulars, so far forth as may be, without the peril of our religious and loyal people,'' and protested that ''this is done for no other purpose but to avoid the effusion of blood,'' and, by banishing the seducers of his people, to ''remove all cause of such severity.'' ''We confess that we desire still to make it appear, in the whole course of our government, we are far from accounting all those subjects disloyal that are that way (i. e. Catholicly) affected. . . . Therefore as aftertimes must give us trial of all men's behaviours, so must all men expect that their own deserts must be the only measure of their own fortunes at our hands, either one way or other.''

Here was the new policy, as clearly set forth as was advisable in a state document; and the tone of the paper is little less than remarkable, if we remember that the Gunpowder Treason was scarcely nine months past; and if we consider the character of the laws just passed and the sentiments openly expressed in the House of Commons. Those who would not be loyal and accept the oath of allegiance should suffer under the new laws; but no others should be molested. In the proclamation of June, 1611, occurred these striking words: "We had never any intention, in the form of the oath, to press any point of conscience for matter of religion, but only to make some discovery of disloyal affection."

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[1] Proclamation Book at the Record Office. Reprinted in Strype, *Annals*, IV, 557; and Tierney, IV, cxxxii.

Time was needed to allow the seculars to convince the Catholics at large of the lawfulness and expediency of accepting the new situation; the recalcitrant had been allowed till August first to leave the realm; and it was therefore not until August that the commissions issued for the discovery of seminary priests[1] and the administering of the new oath to all who intended to "pass over the seas." [2] In the fall arrived a papal brief dated September 22[3] which condemned the oath as containing things opposed to faith and salvation. Eight English priests, who were still in doubt, found small comfort in the vague and general phrases of disapproval; and wrote to the Pope begging him to specify his reasons for refusing them the desired permission.[4] The Government was not surprised at the papal attitude, and was very likely pleased. It made the situation perfectly clear cut. "Uppon that point of disadvowing the oths by the Pope he (the King) used large discourse that it wold be an occasion to him to make an evident tryall of the allegiance of his subjects of that sort whether they wold adhere to him by persisting in their oths or to the Pope in forbearing it hereafter." [5] Had Pius V consented to the oath, the immediate consequences would have been favourable; but the permission might be at any time revoked, and James would still be dependent on the Pope's fiat for the loyalty of his subjects. This was precisely what Bancroft wished to avoid. Some form of oath was sought which the English Catholics would accept, but which the Pope and the Jesuits would be certain to disapprove; for, as he pointed out to James, until the Catholics would act independently of Rome, no lasting settlement could be secured. Chance had thrown in their way an excellent opportunity and it was eminently desirable that the Pope should not spoil it by weakening at the moment when his inflexibility had been built upon as a distinct asset.

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[1] Patent Roll, 4 Jac. I, part 12.

[2] Patent Roll, 4 Jac. I, part 12.

[3] Printed in Tierney, IV, cxl.

[4] In Tierney, IV, ccv. Mr. Taunton suggests that Parsons saw to it that the letter never reached the Pope. *History of the Jesuits in England*, 356.

[5] Lake to Salisbury, October 19, 1606. Hatfield MSS. 118, f. 15.

In the meantime, no attempt seems to have been made to administer the oath.[1] The principal priests had no doubt already taken it, and probably the bishops and justices of the peace had offered it to some few influential men in their jurisdictions, who were practically certain to accept it. As far as can be judged by the scanty evidence, the oath was used between June, 1606, and February, 1607-8 only to induce the Catholics to look favourably upon it. As will be later seen, Bancroft was desirous that the golden opportunity should not be lost by undue haste or ill-timed severity. Indeed, according to the Earl of Sheffield's report to the King, November 1, 1606, the recusants in the North "begin to grow verrie insolente and to show themselves and there intentions more openly, since of late by what means I know not the penaltie of those lawes haue not so absolutely as before ben inflicted oppon them as allso many grases and favores showed them." "Of late in all thes northe partes (yeat the plott as themselves say came oute of the southe) many celect men haue been imployed to goe upp and doune to gett onto a petission for tolleration of religgion all the handes of not only requsants bout also of all souche as be favourers of there religgion."[2]

Meanwhile, the Archbishop occupied himself, during October and November, 1606, in unravelling that astonishing legend of the barley-corn.[3] One John Wilks, a Yorkshire silkweaver, had been present at Garnet's execution and brought away with him an ear of barley-corn, bespattered with some of the Jesuit's blood. At the earnest entreaty of Hugh Griffin and his wife, he gave them the straw which was soon set in crystal as a relic. "About nine weeks since and not before,'' Griffin thought he saw the lineaments of a face on the straw, and having in the next fortnight looked at it some forty times, often for ''half an hour or an hour together,'' he came to the conclusion that Garnet's face was miraculously drawn upon the straw in his own blood. The news of the miracle spread like wild fire; and it was reported that prominent priests who had known the dead man declared the likeness to be excellent. Bancroft evidently did not consider it expedient to allow Garnet to be erected so soon into a popular martyr by what seemed certainly a trick. In due time, he found the original discoverer of the face, induced him to confess how long a time had elapsed between his first sight of the straw and his discovery of the face on it, and to make various other admissions very damaging to his case. Into all of these the Bishop may have frightened the poor, superstitious man. But the information thus gathered was also spread broadcast and became a distinct factor in a complex situation.

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[1] The exact contrary has usually been stated, on the strength of some ambassadorial reports, but chiefly of the statements of Jesuits or their sympathisers. Dr. Gardiner says (*History*, I, 288) "The oath which might have been used to lighten the severity of the laws which pressed so heavily even upon the loyal Catholics, was only employed to increase the burdens upon those who refused to declare their disbelief in a tenet which was inculcated by the most venerated teachers of their Church, and which might be held innocuously by thousands who would never dream of putting it in practice."

[2] Earl of Sheffield to (the King) November 1, 1606 (November 2?). Hatfield MSS. 118, f. 36. Holograph. This is the original report of an eyewitness written at the time.

[3] The accounts of this are plentiful but not trustworthy. The account in the text is based upon a MS. in the archives of the Old English Chapter, printed in Taunton, *Jesuits*, 322. See also Foley, IV, 133. Some of the extravagant fables about it will be found in *Somers' Tracts*, II, 110, (Scott's Edition), and F. Osborne's *Traditional Memoirs of the Reign of James I*, Sect. 12.

Meanwhile, Blackwell was in an agony of indecision. It was his duty to promulgate the papal brief, which not only convicted him of error but also adopted a policy which he believed ruinous for the Catholic party in England. His dilemma was very much like Garnet's over the Gunpowder Plot. According to his own story,[1] he had already dispatched Mr. Singleton to Rome in August, to explain to the Pope his position, but Singleton passed the breve on the road. Then, early in September, before the breve arrived, Blackwell had issued letters stating at length his reason for considering the oath lawful and forbidding all instructions against taking it. Then arrived the breve, directed however, ''*Catholicis Anglis, Dilecti filii,*'' without any special mention of Blackwell himself. Apparently, too, more than one copy was forwarded so that others received it at the same time he did. Then it was that he took a courageous step. Taking advantage of the fact that the breve was addressed generally to the English Catholics, he drew the inference that no special promulgation was required of him and did not publish it at all. While this was perhaps a good technical defence, he had in spirit disobeyed the Pope,—a step for a man in his position sufficiently daring, and denoting clearly how firmly convinced he was of the feasibility of the new scheme. Consternation spread through the ranks of his opponents when they learned that he had practically disregarded the papal commands; and soon a letter, dated September 28, 1606, and purporting to be from Blackwell, was being passed about supporting the breve and condemning the oath. This epistle Blackwell later strenuously repudiated, and declared he never wrote.[1] All the autumn and winter, the war continued. ''These naughty priests afflict us very much;'' wrote Blount to Parsons, on December 7,[2] ''for, besides Skidmore, the Bishop of Canterbury his man, Rouse, Atkinson, Grosvenor, and others relapsed which openly profess to betray their brethren, others are no less dangerous, which persuade a lawfulness of going to sermons and to service, by which means many worldlings, to save their temporals, are contented to follow their counsel, and not only that, but justify their fact also. I would to God the customer (i. e. the Archpriest) would inform of all such matters as belong to him: for his silence doth argue a kind of neglect of the points; and our information maketh us more hated of the estate and secular priests.''[3] Even the Jesuits were compelled to admit the defection of the Catholics to the side of the Government. ''So it is,'' wrote Holtby to Parsons, ''that partly by the doctrine of approvinge the oathe and much more of allowing and defending our longe abhorred churche-goenge, we are brought into that estate, that we feare in short tyme *ne lucerna nostra prorsus extinguatur,* neyther let our friends think that we speak this to amplifie the matter. for no doubt the case is more Lamentable then we could haue Imagined or expected. for now not onely weak persons hear and there upon feare of temporall losses do resent from their constancie, but whole countries and shires runne hedlong without scruple unto the heretickes Churches, to service and sermons, as a thinge most Lawfull, being emboldened thereunto by the warrant of their pastors and spirituall guides.''[4] The Jesuits even seem to have had an idea that the repeal of the penal laws and the favour of the Government might be bought.[5]

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[1] ''Fifth examination of George Blackwell, Archpriest, taken July 2, 1607, before the archbishop of Canterbury, and the dean of Westminster.'' Printed by Tierney, IV, cxlii, from the original.

In the following summer, inasmuch as the situation was still unchanged, Bancroft took Blackwell into custody, or, as the Archpriest put it, "it hath pleased our gracious Lord to suffer me to fall into the mouth of one, who long hath gaped after me." Very likely Bancroft could have seized him at any moment during the past eight years had he thought it expedient. As usual, the Archbishop was excellently informed of everything that had transpired even to the priest's most secret doings; and, says Blackwell, he "made an heavie present unto me of his holines briefes, and of the coppies of my Lettres about the publicacon of the same with such other pressing Evidence of all my proceedings," that the poor man saw denial was futile. He was examined eight times, and signed a great many papers, with a full account of most of these transactions, all of which Bancroft preserved for future use. For the nonce, the Archbishop was satisfied with securing from him a letter to his clergy, dated July 7,[1] 1607, in which he retailed the facts of his late examinations, declared that he had taken the oath as it stood in the statute book, and urged all his clergy to do the same and instruct the laity to follow their example. Blackwell had now committed himself, and another crisis had been forced upon the Catholics. So long as there was a division of opinion amongst them, and so long as their regularly constituted authorities abstained from public commands, it was difficult to force any of them to take the oath by the pressure of their own organisation, because they could easily have recourse to the fact that their organisation had not officially registered any opinion. The head of the seculars had at last acted openly; and, although, as his letter showed, some compulsion had been used, the opinions, which he gave forth, were only those which it was well-known he had maintained in private for the past year. He had not changed his views under the pressure of the archiepiscopal authority but had merely been induced to make them public.[2]

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[1] ''Fifth Examination of George Blackwell.''

[2] Printed by Tierney, IV, cxlv, from the original.

[3] Tierney, IV, cxlv.

[4] Stonyhurst MSS. Anglia, A. III, no. 71. October 30, 1606.

[5] Stonyhurst MSS. Anglia, A. III, no. 62. July 14, 1606; no. 72. December 7, 1606.

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[1] Printed by Tierney, IV, cxlvii, from the original in S. P. Dom. Jac. I, 28, no. 5. He has modernised the spelling. What seems to be the original of the oath Blackwell took is in Additional MSS. 30662, f. 73. About this time, Bancroft also examined the Jesuit, Blount, who was not communicative. Asked about the oath, "Risposi di no, perche qual giuramenta, dissi, ne da me, ne da qualsiuoglia altro Catolico si puo pigliar con buena conscienza." Stonyhurst MSS. Anglia, A, VI, f. 305.

[2] "The Archpriest who is in prison has caused great satisfaction by taking the oath of supremacy and by advising others to do so too. Although he is the Pope's chief minister here and as the head of the Catholics deeply suspected of complicity in past events, it is thought that he will not fare so ill as they believed at first. By his Majesty's orders he is treated in prison in a manner that shows a kindly disposition towards him."

The effects of the letter were gratifying to Bancroft. The Jesuit Vice-Prefect declared, in his yearly Report to the General of the Jesuits at Rome,[1] that "nothing in all these thirty years of persecution has done such injury to religion as this scandalous example of the Archpriest, whose very virtues have helped to lead men astray." "It is further said that he has persuaded himself that the Archbishop of Canterbury means well to the Catholics." "There are many who follow the Archpriest . . . (of whom) most have forsworn themselves; others abusing their false conscience, persuade themselves that they have acted aright." He further reported that in the North the Catholics were cruelly persecuted. "Their cattle are driven away, their houses ransacked, walls are broken down, chests and secret drawers are forced and searched. On all hands we hear of nothing but the violence and rigor of the authorities . . . (but) by *taking the oath one is spared these outrages*, the rage of the persecutors is softened, and gentler treatment experienced from the Government and its officers."[2] The official head of the Jesuits felt himself bound to report to his superior that the severities of the law fell only on the recalcitrant who refused the oath. "We have to bear the full brunt of the storm." The Jesuit accounts are therefore quite naturally full of complaints of the severity of the measures by which the Catholics were constrained, for, with some exceptions, only their followers suffered. Assuming that the rest, being renegades and deserters, were not to be counted among the true sheep, by that means we arrive at these amazing statements, that, because the Jesuit supporters were in difficulties, all the English Catholics were severely handled.

In September, the Bishop of Durham had summoned before him some twenty noted recusants, of whom six at once took the oath, several more promised to take it, and the rest were undecided. The Bishop somewhat doubted their sincerity, but hoped they would

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(September $\frac{2}{12}$, 1607. *Venetian Calendar*, XI, no. 59. See also no. 25 and 37.) "All else is quiet: and in matters of religion it seems that custom makes the regulations lighter for the Catholics. And so, there may well be peace for a period about such subjects, unless, some event in Ireland or the Pope's rumoured intentions to substitute for the Archpriest who is now in prison some one of higher rank, do not succeed in breaking it." (October $\frac{7}{17}$, 1607, *Ibid.* no. 86.)

[1] Letter of 1607. Printed, very likely with important omissions, in Foley, *Records*, VII, Part II, 978, at 982.

[2] Foley, *Records*, VII, Part II, 981.

be "worthie of that great and undeserved favoure which they so plentifully receyve at your Maiesties hands."[1]

The overt action of Blackwell in favour of the oath called forth a second papal breve against the oath[2] and a letter from Cardinal Bellarmine,[3] the great champion of the Church and a scholar worthy of admiration in any age. He set forth at some length a variety of reasons against the legality of the oath which he sustained by citations from the Church Fathers; and to this, Blackwell replied with an even longer epistle and even more citations.[4] As usual, Bancroft proceeded to turn the incident to account by printing and distributing both letters, in February 1607-8, together with all of Blackwell's examinations of the previous July, his letter to the English Catholics, and some other timely material.[5] Blackwell was once more summoned, and signed before a large and dignified body of the High Commission, a copy of his examination with an attest acknowledging it to be his action.[6] All this had been so timed that, when the gentry and others in attendance at the law courts during Hilary term, were ready to leave for their homes, this pamphlet was one of the things they were able to take with them.

At last all was ready. Bancroft believed that the overwhelming majority of Catholics were eager to take the oath, but were timorous of disobeying the directions of their spiritual advisers. Now, Blackwell's letter of July had been well distributed and should have produced all the effect that could reasonably be expected of it; a certain number of influential gentry had been offered the oath, as a matter of example to others, and had taken it; the new book just issued would furnish all concerned with reasons for action on both sides of the controversy. The moment had arrived when the Archbishop saw that a little temporal pressure circumspectly applied would, very likely, as in Blackwell's case, suffice to turn the scale.

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[1] Botfield, *Original Letters,* I, 111-113. September 24, 1607.

[2] August 23, 1607. Printed in Tierney, IV, cxlvi.

[3] September 28, 1607. Tierney, IV, cxlviii.

[4] November 13, 1607. Tierney, IV, clii.

[5] The full title is as follows: *A large examination taken at Lambeth, according to his Majesty's direction point by point of Mr. George Blackwell, made Archpriest of England by Pope Clement 8 upon occasion of a certain answere of his, without the priuitie of the State, to a Letter lately sent unto him from Cardinal Bellarmine, blaming him for taking the oath of allegiance . . . Printed by Robt. Parker, Printer to the King's most excellent Majestie,* 1607. There seem to have been at least three English editions.

One in French was published in Amsterdam in 1609. The book was also published in Latin. There are manuscript copies in Additional MSS. 30662, f. 72 ff. in French. It was certainly widely circulated. Perhaps the most remarkable point about the tract is that, issued by the King's printer, it nevertheless calls Clement "Pope" instead of "Bishop of Rome" and gives Bellarmine his title. Such quasi-official recognition of the Pope's authority was more than had been given in England for three-quarters of a century.

[6] One examination took place in December and perhaps another in January. See a copy of the proceedings with the King's own marginal notes in Harleian MSS. 6807, f. 190.

On February 15, 1607-8, the King addressed the judges who were about to set forth on their circuits; and gave them what were, so far as we know, the first explicit general orders for the enforcing of the penal laws of 1606. He directed, according to Francis Bacon's notes of his speech,[1] that "the oth of allegeance (was) to be generally ministred, but shewd a mild inclinacion towards (such) as were not Apostatans since his tyme, nor practicers; and comended to favor such Preests as would take ye oath of Allegeance." When James had finished, the Privy Council summoned the judges into another room, and gave them more explicit orders. "No preest to be executed yt would take the oth of allegance," or was willing to argue or confer about it; and "even of them, sparingly. The K(ing)'s woord was No torrent of blowd: poena ad paucos." On inquiry, it developed that scarcely a half dozen priests were at that moment in jail, showing that there had been as yet "no watch or search." In regard to lay recusants, the new oath was only to be offered to those who were active "practizers," to recusants already indicted, and to noncommunicants. It was not even to be offered to quiet and well-behaved Catholics who had created no open scandal of recusancy. "Noncommunicants" were to mean only the obstinate and seditious; and, inasmuch as a person might take the oath and yet neglect to appear at communion, "it was probably inferred that yf some of the Indited by ye K(ing)s speach were to be spared, *a fortiore* those which are no recusants." Salisbury stated that, in his opinion, by condemnation of the oath of allegiance, the Pope wished to urge the King to a rigorous enforcement of the laws, which in its turn would arouse in the Catholics despair and hatred of the Government, encourage plots, and promote quarrels of all sorts, "ye better to expose this realm to a pray." And for that very reason, added Bancroft, the more extreme the papal measures were, the more lenient should be our own. In June, 1608, a Commission issued for letting and disposing of recusants' goods and of the two parts of their land forfeited by law. In July appeared Letters Patent, directed to Bancroft, the Lord Chancellor, and most of the bishops and law officers, against Jesuits and seminaries and to ‘‘reform errors, heresies and schisms whatsoeuer within the Realme of England.’’[1]

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[1] Taken in the room at the time. Printed most faithfully by Spedding in *Life and Letters of Bacon*, IV, 90.

Thus, the Catholics, as a whole, were by no means threatened by the Government,[2] though most of them were, no doubt, in terror for fear they should hear a pursuivant's knock upon the door. It is this anticipatory fright of which we read so often.[3] Constant advantage was taken of the liberal offer of time to confer with the bishops and justices over the legality of the oath; and, indeed, some men were still undecided after a year or eighteen months, while others were suddenly taken too ill to travel to the Quarter Sessions, where the oath was administered, professing, however, their readiness to *appear* as soon as they were convalescent.[4] There were some astonishingly long illnesses thus recorded. Sometimes, when the justices came in person to the residence of the recusants, they found them away on a *visit*. ‘‘From thence, he went to Mr. Symonds, a man of great estate, whose wieffe being a recusant convicted, hee answeared us, that his wieffe was gone before our comming, for that shee would not take the othe of allegeance.’’[5] Many Catholics were willing to take the oath, with a protestation, said Mush, speaking of the spring of 1610.[6] Some priests approved a device by which they first protested ‘‘I will take this oath so far forth as it concerneth my temporal duty or obedience to the King, after which they thought they might kneel down and take the oath verbatim.'' Other laymen proposed to say to the judge: ''This oath containeth many difficult points which we do not understand, (as in truth, there be as many divers expositions of every part thereof as there be heads among us,) but to so much of it only, as doth truly concern our temporal allegiance to the King, we will and do swear sincerely and willingly—and without more ado, kneel down and lay our hand upon the book.''[1] Any one who appeared before the bishops or justices and denied the oath, was perforce committed at once, ''wherefore, in policy, both justices, bishops and others, have thought it best not to appear.''[2]

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[1] Both in Patent Roll, 6 Jac. I, Part 30, dated June 1 and July 1. For their drafting see Lansdowne MSS. 153, f. 232, 234; holograph letters by Lake and Cæsar.

[2] This is confirmed by the Venetian Ambassador, which shows that it was current news. ‘‘In England, too, for some time past they have shut their eyes to much (of Catholic doings) and it is growing ever clearer that the King is averse from punishment and persecution, provided that he is not provoked by recollection of past terror, which God prevent.’’ The Archpriest has been deposed, ‘‘the bull has not yet come to the King's notice.’’ Great wrath is expected. ‘‘Many ecclesiastics here are aware of this.’’ $\frac{\text{March 24, 1607.}}{\text{April 3, 1608.}}$ *Venetian Calendar*, XI, no. 215.)

[3] See some excellent cases in Taunton's *Jesuits*, 360 and 364, for the years 1611 and 1616. The Jesuit accounts are also full of what they expect will happen to them, but it will prove to be true in nine cases out of ten, where the law was really executed, that the sufferer was an obstinate and well-known Jesuit sympathiser.

[4] Tierney, IV, clxx, May 20, 1611, relating to these earlier years.

[5] *Egerton Papers*, 1612, 454.

[6] Tierney, IV, clxxviii, August 19, 1611, describing events of these earlier years.

The Bishop of Chester seems to have interpreted some letter sent him from London as an order to cease all proceedings against recusants in his diocese. He was soon informed by the Privy Council, that the letter was not intended ''to stay the ecclesiasticall course, but to wishe a moderate use of it.'' ''His Majestys meaning is not, nor was then, that you should be in any wayes restrayned from usinge your authoritie, whenesoeuer you shall see cause in your discretion. Only we wish that if the proceedinge ecclesiasticall be only for the poynts of the communion, that such discretion and temper be used, by your officers therein to be sparing in it, savinge when notorious occasion of publicke scandall or audacitie of some obstinate persons shall require it.''[3]

A year later, in a letter from London to the Earl of Rutland, we learn that Salisbury, the Lord Treasurer, ''comending the quiet behaviour of recusants and acquiting them frome being culpable of that monstrous gunpowther treason, thought it was expedient that they should be more mildly delt withall then in former times; whereas some pursuivants have violently behaved themselves in Oxfordshire this sommer, his Lordship hath commanded that upon their returne they shalbe apprehended, comitted to Newgate and punished according to the qualitie of their offence.''[4] The next month, (November, 1609) no less a person than the Lord President of the Council in the Marches of Wales, in a confidential letter to Salisbury himself, detailed some interesting information about a quarter of England far removed from Chester and the Midlands, showing that in Herefordshire the clauses of the oath of allegiance referring to the power of the Pope were left out altogether. "Mr. Justice Williams, in the Publique Assembly of the Country, yeelded such favour unto them in ministeringe the oath in some points concerning the Pope (as hath giuen an example to others of that kinde to refuse to take the same) as by the Law it is penned, and sett forth. In Example whereof, one Charnocke . . . absolutely refused to take the sayd oath (there) being distinctly read unto him, especially in these pointes, viz: the Pope's power to excommunicate the King; to discharge the subiectes of there new allegiance to his Majestie, alleadging that at Hereford Assizes the Judges did not so stricktly exact the oath of the Recusants presented to them."[1]

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[1] Tierney, IV, clxxviii.

[2] Tierney, IV, clxxxii, October 6. 1611.

[3] S. P. Dom. Jac. I, 37, no. 28, October 24, 1608.

[4] *Report on the Rutland Papers*, I. 420, November 28, 1609.

Sir Edward Phelips, who had been travelling extensively in the North upon the execution of the law, reported to Salisbury that recusancy had greatly decreased in Lancashire and Northumberland, and "would much more, if a hand of moderate discipline were usually carried out amongst them." All but a few had conformed to the laws, and the country was quiet. "But I cannot soe much comend neither the peace nor conformity of the people of Yorkshire and the Busshoprick for in both those we founde many felons and doe not finde the Recusants much to decrease in respecte they are countenanced by some gentlemen of noate."[2]

These rather extended illustrations, of the general spirit of leniency and consideration in which the laws of 1606 were administered, have been grouped together not only for convenience, but to show, by these citations, each of which is in itself unimpeachable evidence, which concern all parts of Catholic England, and which were written at different times by different men, that this policy was not one assumed for the month of February, 1607-8, but was carried out consistently over a considerable period of years.[3] The attitude of the Bishop of Chester, the punishment of the too zealous pursuivants in Oxfordshire, the action of Justice Williams in

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[1] S. P. Dom. Jac. I, 49, no. 26. November 13, 1609. Ralph Eure to Salisbury.

[2] S. P. Dom. Jac. I. 48, no. 25. September 10, 1609.

[3] These are amply confirmed by the other less trustworthy material. "Judges going circuit have orders from the Council to judge dexterously with the Catholics who as far as I see, would not be viewed unfavourably in this Kingdom were it not for the fear of the instigations of the Pope, their Chief." (*Venetian Calendar*, XI, no. 457. $\frac{\text{March 2}}{\text{March 12}}$, $\frac{1608.}{1609.}$

Herefordshire, are not matters which can be fabricated or questioned. Couple to this evidence the loud outcry in the Parliament of 1610 that the laws were not enforced, and it becomes evident that the sweeping statements of the sufferings of Catholics in England are not supported by contemporary evidence, for even the Jesuit superior was forced to admit that those who took the oath of allegiance were not molested, and in addition he complained of the number that had taken it.

While it is thus sufficiently clear that the Government did not enforce the laws of 1606 to the letter; and that the Catholics, as a whole, did not suffer to any considerable extent, nevertheless it must be confessed that there was a great deal of individual suffering in many parts of the country. This, however, was due to the zeal or malice of professional spies and informers, and of individual local officers.[1] The policy of the Government was such that considerable grants of authority had to be made to the local officials, with allowance of a great deal of discretion in their use. Once armed with such authority and left to use it as he saw fit, many a man turned it to improper personal purposes. Feuds and rivalries among the various members of a family, or between different families, individual selfishness, avarice, and greed were all excited and aided by the new law.[2] Many a Protestant related to a rich Catholic found himself considering whether he might not, under the new law, inherit the lands, if the proper conviction could be secured against his relative. In a good many cases, justices of the peace, who longed to secure a preponderance of influence in their county, would see that their great Catholic rivals escaped none of the inconveniences of the situation. Naturally, too, the great oppressed the small wherever good opportunity offered, and many a small freeholder or copyholder, with a few acres and half a dozen cattle, was convicted of recusancy and his property forfeited, where his rich and powerful neighbours heard mass in peace. Other influences tended to this same result. Where the emissaries of the Council had been ordered to secure convictions, the small must suffer when the authorities from London did not possess sufficient physical force to oppress the great whom they would have been glad to convict. There was, therefore, much suffering entailed by the penal laws of 1606, despite the leniency with which they were meant to be enforced. Some men lost everything and died outcasts; others suffered exile, as well as loss of property; still others lingered for years in the horrible jails of the period and finally crept forth with the vigour of manhood sucked out of them by fever and dysentery. The Puritans, who sat in Parliament in 1606 and 1610 and denounced the violence and cruelty of the bishops toward the deprived ministers, "whereby our souls are starved," recked little indeed of the Yorkshire and Herefordshire Catholics suffering the more real pangs of hunger and cold. While they complained that their ministers could no longer preach, they paid little heed to those poor Catholics who had lost everything but life and honour. The Pilgrims who went to Holland certainly experienced no harder fate than did the exiled Catholics. Yet the Puritan cry still rose for more severity, for harsher laws, and for the strict execution of the laws that existed. It is instructive to compare the petitions of the Puritans, and of the so-called Puritan House of Commons of 1610, with the letters of the "bloody" bishops written at the time of the deprivation of the Puritan ministers in 1605.

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[1] This is particularly true of the work of Spiller and his aids in Yorkshire and the North.

[2] There are some shocking cases of this sort in C. J. Cox's *Derbyshire Annals*.

Significant an event as was the acceptance of the oath of allegiance in the history of the Catholics of England, it was fraught with even greater consequences for the Established Church. By accepting the government of James as lawful, and by professing temporal allegiance to it, the Catholics virtually acquiesced in the existence of Protestantism in England, and tacitly promised to refrain from further attempts to extirpate it. Although the Established Church was not so much as mentioned in the new oath, nor alluded to in the letters and proclamations concerning it, the acceptance of the oath was, in fact, a recognition by the Catholics of the legal right of the Established Church to exist.

CHAPTER VIII

THE MOVEMENT FOR CATHOLIC BISHOPS

When the news reached Rome that Blackwell had not only disregarded the letters of Cardinal Bellarmine, but had failed to promulgate the papal breve; and had, in addition, allowed the English Government to publish all his statements in favour of the oath, the Curia became convinced that some decisive step was imperative. By a breve of February 1, 1608, George Blackwell was deposed from the office of Archpriest of the Seminarists, a step expected in England for some time; and George Birkhead, one of his assistants, was appointed his successor.[1] Like Blackwell, Birkhead was a quiet man of considerable learning and undoubted piety. Parsons and the Cardinal Protector thought, as they had when they had nominated Blackwell himself, that here was a man whom they could control. They failed, however, to count upon the situation in England, which in a little over a year converted Birkhead, as it had Blackwell, to the views of the seculars.

Shortly after Easter, the new Archpriest made his way to London and communicated the news of his appointment by letters to the different priests. He reported to Bubalis that Blackwell and Charnock were astonished beyond measure, and the rest somewhat dazed.[2] In consonance with his orders from Rome, he next issued an admonition to the Catholics in general, in which he forbade them to take the oath, and also directed letters of similar import to his assistants.[3] In the removal of Blackwell, who favoured the oath and opposed the Jesuits, the seculars saw only new evidence of the papal determination to further the general cause at the expense of the Catholics then in England. At first, they meditated an appeal to Rome,[4] but more moderate counsel led them to appoint a deputation to wait upon Birkland himself. Toward the end of April, then, the new Archpriest found himself confronted with three demands, presented with the practically unanimous consent of his clergy, asking him, first, to obey the clause of the papal breve of 1602 which forbade him to consult with the Jesuits; secondly, to choose his assistants from the secular leaders; and lastly, to govern them, as a pastor and father, without striving to erect another organisation on the ruins of their independence. He solemnly promised to do in all three respects as they would have him, and in return received their submissions and assurances of obedience. But he soon laid the seeds of discord by opening a correspondence with Parsons at Rome, which, though innocent enough and well intentioned, was instantly misinterpreted by his followers.[1] He also ordered the priests in the Clink prison, who had valiantly upheld the oath of allegiance, to conform at once to the papal breve or suffer the loss of their faculties and privileges; and, one year later, May 16, 1609, he declared them deprived.[2]

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[1] Tierney, IV, clvii.

[2] Tierney, IV, clix, April 13, 1608.

[3] Tierney, IV, clxiv, Birkhead to the Superior of the Jesuits, June 24, 1610, describing his actions at this time.

[4] From an original Latin narrative of the event by Edward Bennet, printed by Tierney, V, 13, note, of which these sentences following are almost a translation.

As a result, the seculars paid no more attention to his orders than they had to the Pope's breve, and became at once suspicious of everything he did. Without more ado, they forwarded to Rome, in the summer of 1608, three forms of an oath of allegiance,[3] to one of which they hoped to secure the papal approval; and to all of which Bancroft had no doubt already assented. A memorial with a form of oath, which the subscribers offered to take, was presented to the English Privy Council, and was signed by Birkhead, his assistants, the provincials of the Benedictines, Franciscans, and Jesuits, but nothing further was heard of it.[4] In due time, came from Rome the usual reply that the Holy Father "disliketh them all or any other (oath) whatever that directly or indirectly may concern the authority of the See Apostolic."[5] This was conclusive enough, and provoked something very nearly akin to despair among those who still clung to the papal pretensions. "This scandalizeth all sorts of Catholics exceedingly," wrote Mush concerning these events,[1] "that he should so little regard our afflictions; for they looked rather his holiness should have sent them a lawful oath of allegiance . . . than to forbid a lawful thing, we being in so great extremity and our means of sending to Rome so little and so difficult, or rather impossible, till all be undone. The axe is over our heads, to fall if we refuse; and we must send to Rome!—Oh! how great care whether we perish or be safe!" "The minds of all Catholics are perplexed," noted the Venetian Ambassador, "and they earnestly desire that the Pontiff should be truly informed of the terrible consequences which the prohibition of the oath must entail, there being no doubt that the real way to support the Catholic faith in this Kingdom is to proceed in such a manner that Catholics shall not fall under suspicion of those machinations against which the oath is directed."[2]

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[1] Much of it has been printed by Tierney, V.

[2] Tierney, IV, clx, May 2, Birkhead to the priests in the Clink; clxi, May 16, 1609. Birkhead to Dr. Smith at Rome.

[3] Tierney, V, xliii. Tierney has also printed, (IV, cxc, and cxci,) two forms of an oath which probably, though not certainly, date from this time. They cannot be positively identified with these forms sent to Rome and mentioned here. They are printed infra. Appendix.

[4] Tierney, V, xl.

[5] Tierney, V, xlii. September 4, 1608. The sentiment at Rome was well expressed by Bellarmine, *De Roma Pont.* lib. V, ci. "Most certain it is that in whatsoever words the Oath is conceived by the adversaries of the Faith in that Kingdom, it tends to this end, that the authority of the Head of the Church in England may be transferred from the successor of St. Peter to the successor of King Henry VIII."

The appointment of Blackwell in 1598 had alienated the seculars from the Jesuits; the Gunpowder Treason had sent nearly all the waverers into the secular camp; and filled them all with apprehension of evil to come, and with suspicion of the Society. The removal of Blackwell, the continued refusal of the Pope to countenance the oath of allegiance in any form, was producing among the secular priests and laity at large a conviction that the Curia did not care how much they suffered; and engendered, too, a sentiment which openly showed itself in scorn of the Archpriest's orders and began to look suspiciously like a rejection of papal authority. Instead of being satisfied with one refusal, they interpreted it to mean, as Mush said, that another appeal was necessary. They felt sure that the Pope would not refuse to relieve them if only the condition of affairs could be brought to his personal attention. The head and front of offending, the great stumbling block in the path of peace, was the attitude of the Jesuits; the second difficulty lay in the lack of English Catholic bishops. "The greatest cause of the aberation," declared Colleton to Birkhead, "was (as I thought) the authoritie which some of the fathers practise over the priestes in choosing our superiors and agents and in setting downe lawes for us without assent, consultation, or privitie of our bodie: and in annexing also such kind of faculties to some of them, as haue hardly a president, which is not suspension from use of faculties, but utter losse of faculties *ipso facto* without declaration."[1] The remedy was bishops. "Paul quite undoeth this poor church," wrote Mush, "by depriving it of ordinary pastors, by which our Savior appointed all particular churches to be governed. Verily, here is nothing but most lamentable confusion, debates and factions among both clergy and people; and every day much worse than other, whiles every one is left to themselves and none to govern or have care of the whole. We are all immediately under Paul. He is far absent; can he then, with safety of his own soul, keep this charge, without sending and appointing some other bishops in his place to minister necessaries unto so great a people?"[2] But the seculars, having refused to obey the Archpriest, were in a quandary; for, having rebelled against the only constituted Catholic authorities in England, they had now no legal standing at all. Without leadership, without organisation of some sort authorised or confirmed by the Pope, their followers would soon drift away, the laity would soon become suspicious of men who apparently denied the papal authority, and every object for which they had striven would be irretrievably lost. Hence, the desire for Catholic bishops, which had been so strong ten years earlier, and which indeed had been kept alive ever since, was revived with great eagerness. The problem was, however, not of a nature to be solved by one remedy alone.

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[1] Tierney, IV, clxxix.

[2] *Venetian Calendar,* XI, no. 237, April, 1608.

In reality, the situation was so exceedingly complicated and confused, that it was difficult to see what the remedy should be. There were, at that time in England, the secular priests educated at foreign seminaries, with the Archpriest at their head; the Jesuits, under a Vice Prefect; the Benedictines and a few Franciscans, each under their own officers.[3] None of them had explicit authority over the laity or over one another; but, whilst the regular orders were upon their ordinary status, the seminarist clergy were in a very anomalous condition. It was never true that the Archpriest stood at the head of a well-compacted organisation, with definite forms, powers and traditions.[1] He was in reality a temporary dictator, whose behests were executed by eight or more assistants, each supreme in his own district; and whose authority was absolute except for appeal to the Curia at Rome. Like all dictatorships, the office possessed few legal forms, no legal traditions, and very ill-defined prerogatives and powers. If it became necessary to discipline a priest, the Archpriest alone, upon his own initiative, from such information as he was able to gather, could arbitrarily suspend the offender, or deprive him of his faculties. Appeal was difficult, and in all minor matters his discretion was absolute; for he was compelled to report to no one, and had none near him to spy upon his movements.[2] The weight of tradition, the necessity for the observance of legal form, which curbed the powers of the regular church officials, were all lacking in this case. It was essentially a military organisation, meant to bind together, in the face of persecution, the few faithful upon whose efforts depended the vitality of the faith in the breasts of the English Catholics. However necessary this may have been when Parsons conceived the office of Archpriest, it was by no means essential in 1608, for the assumption on which it rested had disappeared—the Catholics had no longer to face the determined attempts of the State to exterminate them. On the contrary, the State, under the direction of Bancroft, was indirectly assisting their attempts at organisation. Moreover, the nucleus for an ordinary episcopal system already existed: many of the priests had

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[1] S. P. Dom. Jac. I, 36, no. 24, September 20, 1608. Reported in a letter from John Colleton himself to Father Parsons. Printed with modernised spelling by Tierney, V, xlvii. See, however, V, xx.

[2] Tierney, IV, clxxix.

[3] These Orders had only recently obtained a foothold, and encouraged by Bancroft, who saw the advantages of their presence and hostility to the Jesuits, had grown in strength very rapidly. The rise of these other orders of the regular clergy is one of the significant developments of Catholic history in England after the death of Elizabeth, and marks the beginning of the era of practical toleration. The seculars believed the Benedictines were more favored by

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the State than the Jesuits, "being men who would not deale in state matters as the Jesuits did," and would seem to have made some overtures to them for assistance in their battle with the latter. Stonyhurst MSS. Anglia, A, III, no. 89. July 26, 1608.

[1] There is no full statement by any contemporary of his position, and it has to be pieced together from many scattered sources.

[2] That "being the imposer of these heavy censures you would not refuse to acquaint me by what law or right you can (having admitted my appeal) take this severe course so infinitely to my own hurt." Colleton to Blackwell, March 10, 1600-1. Tierney, III, cxlv. "It is not his holiness' intention, and never was, that in exercising of my authority for correction of manners and conserving of our ecclesiastical discipline and peace in this time and in these difficulties we should be bound in anywise to the form of contentions and court trials." Blackwell, manifesto of June 17, 1600. Tierney, III, cxli.

already been assigned definite residence[1] in some district where they were expected to minister to the spiritual needs of the laity; the alms fund, contributed by the wealthy, was sufficient to provide maintenance for them all, if only it could be properly administered; the State was willing to see the bishops appointed, provided all Catholics would take the oath of allegiance, and provided the leaders would maintain secret relations with some bishop. There were, however, several very real obstacles besides the papal reluctance to give the desired orders.

The clergy whom the Archpriest directed were almost exclusively educated abroad at the seminarist colleges at Douay, Rome, Valladolid, and the like, where the certificate of fitness, signed by the rector, was a necessary preliminary to the receipt either of a degree or of the ordinary faculties of a priest. Inasmuch as the rectors of most of the colleges were Jesuit sympathisers, and inasmuch as the right to send students to the colleges had passed out of the hands of the English clergy into the control of influential Jesuits in Europe, the Archpriest and the English local clergy, except so far as they were willing to become amenable to the Jesuits, had no influence whatever upon the character and fitness of the clergy sent on the English mission. Hence, the movement set on foot by the seculars for the control of the seminarist colleges, under the specious suggestion of providing education for controversial writers,[2] meant an attempt to secure the right to determine the quality of the clergy of whom their institution was composed. The Jesuits, too, had for some years administered the alms fund with the connivance of the Archpriest,[3] and had spent the bulk of it abroad. To have an archpriest free from Jesuit influence at the head of a body of priests while the membership and the income of the organisation were firmly in the grip of the Jesuits, had produced an anomalous situation, of which the latter had been quick to take advantage. They had collected the money so far as possible by their own agents,[4] and had attempted to starve out the seculars by withholding the funds. As fast as men faithful to the interests of the Society could be pushed through the colleges, so as to receive a faculty (and some of them stayed only a few months), they were shipped over to England,[1] partly from a desire to embarrass the Archpriest, who had to provide residence and income for them, but chiefly from the hope of gradually changing the balance of the secular clergy. But both schemes only swelled the adherents of the seculars, for, after the Jesuit follower had suffered for a few months from exposure and scant food, and after he learned that the lack of money arose from the Jesuit administration of the alms fund, he was often among the loudest in his denunciations of the Fathers. Others still renounced Catholicism and joined the English Church.

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[1] Tierney, V, 7, note: lxxxiv for cases.

[2] Tierney, V, viii, lvi, lxxi.

[3] Tierney, IV, clxxx, note.

[4] Heburne to Blackwell, *Archpriest Controversy*, II, 224.

There was, therefore, no doubt that the confusion was great. Four separate bodies of Catholic clergy, without legal connection with one another, and none of them with authority from the Pope to do more than to make converts, were struggling to influence the English laity to follow them. The alms fund, meant to support the seculars, was controlled by the Jesuits and turned to their uses; and the colleges for the education of the clergy, whom the Archpriest was to rule, were governed by Jesuits and Benedictines. Couple to this diffusion of energies and this warring of factions, a further split which divided all the groups into men in favour of the oath of allegiance and those bitterly opposed to it; and an additional schism between the seculars and the regulars over the inauguration of episcopal authority; and it will be readily appreciated that the situation was complex in the extreme. Then, among the seculars who were willing to take the oath of allegiance, there was a party which followed Blackwell and Bishop, and another which obeyed Mush and Colleton and which later gave in its adhesion to Birkhead, the new Archpriest. The papal breve forbidding the oath of allegiance caused further schism, because part of the priests (on the whole the Blackwell faction) were ready to take the oath in the face of the prohibition, and others, who had hitherto been favourable to it, now hesitated and drew back. Certainly, if Bancroft's sole object, when he undertook the negotiations with Bluet in 1601, had been the sowing of discord among the English Catholics to prevent concerted action against the State, the effect must have far surpassed his expectations. Yet, despite all this confusion and disagreement, three points were gradually but clearly emerging from the chaos,—practical immunity from the penal laws for all Catholics who would take the oath of temporal allegiance and the union of all secular priests and laity in favour of this settlement; the steady rise of hostility to the Archpriest and to the influence of the regular clergy; and the equally undeviating progress of the sentiment in favour of English bishops.

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[1] Tierney, V, 8, note. "The insufficiency of such as come is another shame to us . . . add hereunto the lack of knowledge and learning or other good parts that most of them that now come hither are disgraced with, it is not to be expressed the obloquy the Church of God endureth hourly." John Bennet to Smith, October 19, 1609.

Although the sentiment in favour of bishops was stronger in 1608 than at any time during the previous years, it had never been wholly lost sight of, and some efforts had been constantly made to procure their appointment. On May 16, 1606, Champney and Cecil, two of the Appellants' envoys on the ill-fated mission of 1602, once more set out for Rome to plead for the appointment of bishops.[1] There they met the suave but crafty Parsons, who, as usual, by one means and another, succeeded in preventing them from reaching the Pope, and even went so far as to open and suppress some letters written in favour of the project by Lord Montague, although the missives were directed to the Pope himself.[2] The commission which the two priests carried, signed by seventy seculars, availed them nothing, though it had more than double the number of signatures that had been affixed in 1602.[3] In the following summer, the seculars sent a memorial to the Pope.[4] Again in the summer of 1608, finding the clergy strongly in favour of the project, Birkhead contemplated sending an envoy to Rome, but allowed Parsons to dissuade him, to the great disgust of many of the Catholics. "God give us all patience," wrote Lord Montague, "and the spirit of wisdom and fortitude, whereby, like zealous champions of our catholic commonwealth, to defend ourselves against father Persons, Mr. Fitzherbert, and their adhering oppressors. . . . Thus it is; Mr. Fitzherbert hath most resolutely written to Mr. Wilson (i.e. Birkhead) a mandatum from his holiness that no procurators shall come to Rome, with other circumstances such as you may hear too soon: insomuch as Mr. Smith dareth not to go. . . . For mine own part I could wish the journey to be respited for a time, till both the clergy and laity had to each other bemoaned ourselves of that woful misery, whereto we may not need to doubt but the fathers of the society have brought us, raising their lofty towers with our unfortunate ruins. Alas! what hath either the clergy or we of the laity demerited to be debarred of access, either by person or by letter to the see apostolic, for whose eminent prerogative we lose our lives and livelihoods, while father Persons flourisheth, if he tyrrannize not, at Rome, and his brethren here commonly scape all real danger.''[1]

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[1] Tierney, V, 10. The opinions in their books seem to have been debated at some length. The petition of Harrison, procurator for the Archpriest, presented to Bellarmine, May 18, 1606, is in Stonyhurst MSS. Anglia A, III, no. 60; the famous information which he delivered to the Pope slurring the character of the seculars is in the same volume, no. 73.

[2] Tierney, V, 16, note; xxvii, xxviii.

[3] It is curious that the Appeal of 1602 should have been signed by 30 priests; that of 1606, by 70; and that of 1610-1611, by 140.

[4] Additional MSS. 30662, f. 72 b.

Thus, the months slipped by till, with the coming of January, 1608-9, the idea again was broached by his adherents and accepted by Birkhead, of sending an envoy to Rome, not openly to advocate the appointment of bishops to which Parsons had led them to believe the Pope was irrevocably hostile,[2] but to require an authoritative interpretation of the words of the breve of 1602 which forbade Birkhead to consult with the Jesuits. In fact, the new Archpriest had not been long in office before Parsons and Holtby suggested to him how much benefit he could derive from their wisdom and experience; and in due time informed him that the breve really prohibited him only from concerting measures with the Fathers which might be offensive to the English Government.[3] With this ostensible object, then, of obtaining a new papal order, but with the actual intention of viewing the state of affairs at Rome, to ascertain whether the Jesuit was telling the truth, Dr. Richard Smith and Father Thomas More set forth for Rome on February 26, 1608-9.[4] ''They are desperate,'' wrote one of the Flemish Jesuits, ''for they give out that they will not return homewards to England again, unless they prevail. It is thought that they are accompanied with my Lord Montacute's letters (and God grant not others) to deal for the removing of the fathers (i.e. Jesuits) out of England and are to make large offers. . . .

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[1] Tierney, V, lii.

[2] Tierney, V, lvii.

[3] This correspondence, which is in some ways the most discreditable thing Parsons ever did, is printed in Tierney, V, xxix-ciii. It can be demonstrated that Parsons wilfully wrote falsehoods to mislead Birkhead. Parsons said ''that the prohibition was to be understood only of treating together matters of state or that might justly offend the state.'' V, xxxix.

[4] Tierney, V, 20, note.

We, here in Flanders, provide to prevent their intended plots, by our letters with the first post.''[1]

Their mission had Bancroft's full approval; and, indeed, while the ports were so strictly guarded, the two could not possibly have left England without his consent.[2] Every thing was conducted much more openly than had been the case in 1602 or 1606. A large assemblage of priests had met with Birkhead in London, to draw up a commission and discuss the venture;[3] and had the Archbishop not been fully informed as to what was progressing, he would have imprisoned them; and had he not in truth protected them, they would all have been arrested by the pursuivants and private searchers who swarmed in London. The great diligence of Bancroft's agents had more than once attracted the attention of the Venetian Ambassador; and, in fact, no better evidence of the connivance of Bancroft at all these doings between 1606 and

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[1] Tierney, IV, ccxix, April 9, 1609.

[2] ''Yet I have heard that no priest was landed any time in England, but the bishop (Bancroft) had a perfect character of his temper and relations: the easier brought about by him that (in the estimation of the Puritans) owned most of their tenets, being beside no rigid persecutor of any who had not in his composition the gall of treason mixed with religion. . . . And from this indulgence of the archbishop grew more security than danger, because such priests as were connived at (the most of other orders) looked upon the Jesuits as enemies, and all newcomers of their owne under a no milder aspect then intruders on their profit; and therefore the more inquisitive after their conditions, and if found pragmaticall, it was no hard matter to purchase their remove by the mediation of one so neere the helme as the bishop was, who, besides the quality of secrecy remaining so constant to his promise, as it was more safety than danger for them to rely upon his word. And that some cunning seminaries did indeavour the monopolizing amongst themselves all the profit to be made by the English catholickes I have a presumption of mine owne from a priest I met with on the other side the water, who told me he lived farre better during the tyranny (as he was pleased to call it) of Queene Elizabeth, then since the licence afforded under King James, by which divers young schollars of both universities were daily tempted into orders, and many (restrained before out of love to their safety) did not goe over in shoales, to the great detriment of the old standers. Yet, notwithstanding the incomparable diligence of this prelate under two princes, for the preservation of peace and unity, he was abominated by the preciser sort. . . . I confesse I have heard him charactered for a joviall doctor, but very zealous of the clergies revenue, no lesse than his countries safety, which he indeavoured to bring about through a reduction of Britanny into one forme of worship by the traine of Calvine most rigidly opposed: but the two contrary factions at court (one of them thinking all things fit to be destroyed the other laboured to preserve) did, upon the vacancy of every bishoprick, but one insutable to their humours that had the luck to prevaile. The cause the present incumbent did . . . unravell what his predecessour had with more policy and charity twisted.'' Osborne's *Historical Memoirs*, 62, 63, 65.

[3] Tierney, V, liii, and liv.

1610 could be desired than the continuance of these schemes, meetings, embassies, and quarrels. "Some four or five more, not yet discovered are said to be intelligencers for the bishops, and to give notice of all they know: whereof Leak is named for one, a principal factor for bishops, with Mr. Colleton, Mush, R. S. (Smith) Bishop, and others. My lord of Canterbury looketh daily for news of R. S. his negotiations."[1]

But the Jesuit tales that nothing was done by More (who had been left at Rome as the secular agent) without the approval of the English Privy Council were no doubt exaggerations, for they were meant to apply to all the details of the negotiation.[2] Still, there can be no doubt, that Salisbury, James, and most of the Privy Council were cognisant, through Bancroft, of what was going on. Meanwhile Blackwell had been well treated. His defence of the oath had been issued, by Bancroft's order, in a Latin translation early in the year 1610, and he was given a pension by the King to supply the place of the money from the alms fund which the Jesuits took good care he should not get. He was in name a prisoner, but was free to go and come as he liked, visit whom he pleased, and, as the Venetian Ambassador thought, gave no signs of a desire to be discharged.[3]

Well aware that they should need all of the friends they could possibly have at Rome, Smith and More first visited Father Bennet, a Capuchin at Rouen; then, avoiding the Jesuit-ridden college at Douay, and the Pope's nuncio at Paris, pushed on to Rheims where they met Giffard, a secular, and Father White of the English Benedictines, who came from Douay for the express purpose of the conference. Thence the pair departed for Lorraine to interview Pitts and other English seculars.[4] In May they reached Rome where Parsons had for some time been prepared for their reception. He told the Pope that only a few discontented priests were behind the demand for bishops; and that, although the unpopularity of the Archpriest made the confusion great, it would be much worse if bishops were appointed. Peace and concord were necessary, but the project of every malcontent could not be tried on his unsupported assurance that it was the long-sought remedy. There was sound sense in what he said, and, had his facts been true, his position would have been unassailable. He was unwilling, however, to allow the priests to state their view of the situation, and hence resorted to the same dilatory tactics he had used so successfully in 1602 and 1606. "The old fox and all his Cubbes about him do what they can to discredit him (Smith) as sent from a few malcontents," wrote Mush, who was anxious to aid by extending Smith's powers. He thought that two points might be added to the petition already signed; the one congratulating the Archpriest on the beginning the agitation for a bishop; the other, "yt all the Jesuites and there dependants abroad should be forbidden by a Breue to deale any way with the Clergie or their affayres." He also wished the priests to delegate to the Archpriest the right to subscribe their names "to what soeuer he pleas," and insisted that the main point after all was the agreement of all the seculars to some one thing.[1]

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[1] Holtby to Parsons, May 6, 1609. Tierney, V, 25, note. Tierney, jealous for the defence of the seculars, regarded this as a calumny. Very possibly Colleton and Mush did not themselves still deal with Bancroft in person; and if they had, it was politic to deny it at such a time. Some one in the confidence of the priests certainly did keep Bancroft informed of the state of affairs, with their knowledge and approbation. Yet, all of them could have sworn faithfully that they held no intercourse with heretics to the detriment of the Catholic religion. Naturally, such a matter as this is hardly demonstrable by absolute proof.

[2] Tierney, IV, clxv, note.

[3] *Venetian Calendar*, XI, no. 786. $\frac{\text{February 1}}{\text{February 11}}, \frac{1609.}{1610.}$

[4] Tierney, V, lviii and 51 note.

Smith was finally able to present to the Pope, on May 24, his memorial regarding the breve of 1602, and received a verbal reply at once to the effect that the breve bound Birkhead as strictly as it had his predecessor, and forbade any intercourse with the Jesuit Fathers, a statement which was confirmed in writing on June 6,[2] by Cardinal Blanchetti. When Smith began to sound rather cautiously about the bishops, Parsons told him, as he had written to Birkhead in the previous September,[3] that the unanimous consent of all the English clergy would be necessary before the Pope would consider the appointment of bishops. "You know it is impossible," wrote Birkhead dejectedly in reply to Smith's communication, "for me to get the names of all our brethren. Some will never give their consent."[4] This was precisely what

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[1] Stonyhurst MSS. Anglia, A, VII, f. 59. Ex literis cuiusdam sacerdotis Religiosi.

[2] Tierney V. lxi, lxv, xxxix, note. The memorial seems to have been that on the condition of the English clergy in Additional MSS. 31824, f. 18. Other memorials to the Pope, begging him not to deprive the clergy of their faculties, for accepting the oath of allegiance, are f. 19 and 21.

[3] Tierney, V, xlii.

[4] Tierney, V, 19, note.

Parsons thought. So matters dragged on and on, and nothing was done. "It seemeth, our adversaries are too strong," wrote Birkhead, "God, of his mercy, help us! Plain and sincere dealing will bear no sway."[1] "It seemeth they mean to weary me out."[2] In the following spring (1610) Smith came back, discouraged. He found, indeed, as Parsons had told him, that "Rome is a large stable, wherein a horse may outlabor himself in kicking and winching, without striking others that will keep themselves far enough from him."[3]

But the seculars in England did not give up hope. The Pope had declared that the unanimous consent of all priests was necessary before he could appoint bishops, and the only way to obtain that consent was by the subscribing of a petition, and by the collection of letters in favour of episcopal authority. This the chief seculars proceeded to do with great vigour during May, June, and July, of 1610. "The appellants run about more than ever," wrote Holtby, the Jesuit Superior, "collecting votes in favor of bishops, and their importunity is very troublesome in these times of persecution. They obtain the subscription of all those who show themselves indifferent or not opposed to it. . . . And among those who desire Bishops there is a great controversy as to the number, and how many should be Archbishops, etc."[4] "We have nine score names for Bishops which is three parts of the whole clergy," declared Birkhead on July 20, 1610.[5] Harrington told Champney that already two hundred votes in favor of episcopal government had been collected, and that not forty more were outstanding in opposition. It was difficult to collect these votes; "many priests dwell so uncertainly like birds, now on one bush, and now on another, as they are hard to find: and others dwell so far off from others, as, in these dangerous times, when none can appear in London, and few stir in the country, without taking, their voices could not be had without imminent danger.'' But comparatively few were found who actively opposed the petition for bishops. The Capuchins, the Benedictines, and the Franciscans were wholly in its favour, for, like the seculars, they wished to break the exclusive Jesuit influence over the English clergy.

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[1] Tierney, V, lxxxii, October 11, 1609.

[2] Tierney, lxxxv, note. October 9, 1609.

[3] Tierney, V, xlv, Parsons to Birkhead. September 13, 1608.

[4] Foley, *Records*, VII, Pt. II, 1017, July-August, 1610.

[5] Tierney, V, 50, note. This and the two succeeding quotations were printed from the originals. According to Tierney's estimate, however, 115 sent their names with votes, and 29 sent only names, making 144 in all. So that only about fifty per cent. of the clergy actually registered their assent, if we assume that Mush's estimate of 300 is correct. If we take the larger figures which the Jesuits gave, we shall, of course, find the proportion less, which perhaps reveals one reason for the overstatement of the number of priests in England, of which the Jesuits seem to have been guilty. On the other hand, the seculars might as justly be suspected of an unwillingness to face the number of men opposed to them, were it not that these figures come from their confidential letters to each other.

Meanwhile, an obstacle had been removed from the road of the secular priests. Robert Parsons died at Rome, on April 15, 1610. When the news began to spread about, More wrote to Birkhead that the Pope was reported to have remarked that ''we shall be more quiet now that Parsons is dead.'' Yet, as Bancroft's death six months later changed neither the policy of the secular priests nor that of the Government, so Parsons' death left the Jesuit plans intact. The struggle went on without the two great leaders. The long list of signatures collected in 1610, when finally transmitted to Rome, did not produce the effect expected;[1] and, in truth, it was only after thirteen years of further effort, that William Bishop was finally consecrated titular Bishop of Chalcedon in 1623; and not till more than half a century later that Catholic bishops were firmly established in England.

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[1] Birkhead's holograph letter explaining the situation to the Cardinal Protector, Stonyhurst MSS. Anglia, A, III, no. 101.

CHAPTER IX

STRUGGLE WITH THE COMMON LAW, 1608

Whatever was the legality of the flood of prohibitions[1] which were issued in 1607 and 1608 by the courts of common law, there can be little doubt that they threatened utterly to wreck the administration of the Church and to crush its new institutional life. So long as a prohibition was to be had upon the bare statement that the ecclesiastical courts had refused to allow a plea of *modus decimandi;* so long as the surmise that the case was neither matrimonial nor testimentary would be accepted, no layman or cleric would consider final any decision of the ecclesiastical court which diminished his income. With the renunciation of the idea of ameliorating incomes by this means, there disappeared the hope of improving the character, learning, and ability of the clergy in general; and there could be no further thought of reforming pluralities and nonresidence. With all these departed any expectations, which Bancroft had entertained, of being able to dispense with the services of the High Commission by so improving the capability of the individual clergy that the old medieval constitution, which depended upon the willingness of each man in the ecclesiastical fabric to perform his own duty, would of itself discharge again its proper functions. Without the power to fine and imprison, without the right to summon men to London from all dioceses, without the authority to try all subjects of ecclesiastical cognisance, the High Commission would be a broken reed, utterly unfit for most uses to which it had been put. Without it, the administration of the Church would again sink into the lethargy in which Bancroft found it.

Yet the judges were not contented that the ecclesiastical courts should be weak: they meant to destroy their power altogether; and to this end educed new claims. They declared that the oath *ex*

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[1] This was the statement made by the ecclesiastics and admitted by the judges to be in substance true. Coke said during the debates that prohibitions had been "infinite" in number.

officio, as employed by the ecclesiastical courts and the High Commission, had been abrogated by the reformation statutes as repugnant to the common law of England and to the statute of Henry V.[1] If this contention was true, it certainly had not been heard of before in any such uncompromising way, and would in effect nullify a cardinal ecclesiastical procedure, without which a culprit could not be legally examined, tried, convicted, or sentenced. Whether it was or was not legal, and whether it was or was not unjustly and tyrannically used, the oath *ex officio* certainly was the keynote of ecclesiastical procedure and without it the ancient process, which had been in vogue for centuries, would be simply unworkable. To make matters worse, the judges declared that the use of excommunication, for small offenses or for contempt of court, was not as consonant with the customs and habits of English legal practice as it might be; and hinted very broadly that they would be glad if it were restricted to purely ecclesiastical offences.[2] This would rob the courts of whatever punitive power the other claims of the judges did not destroy. If the Commission might not fine or imprison; and if neither it, nor the ecclesiastical courts, might use the oath *ex officio,* they would be weak enough; but to be reduced to the use of excommunication, in such cases only as the common law judges considered ecclesiastical and serious, would leave the church courts merely power to suspend, and perhaps to deprive the clergy; to admonish the laity, and to commend the use of penance. These judicial ''reforms'' would, in fact, leave the Church no effective power of any sort, no sanction whatever for the most trivial order. Even had the judges' contentions been most equitable; had they been the law of the land beyond all possibility for even a bishop to doubt, the Church could not have consented thus tamely to renounce forever its traditional authority. With such an issue before it, the Church could make but one answer—a flat denial of the justice and legality of the common law position. There was therefore at stake more than a legal technicality, more than a quibble about jurisdiction, more even than the relative authority of the two systems of courts: the institutional and administrative life of the Church itself was threatened with extinction.

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[1] 2 Henry V, c. 3 provided that the libel should be granted to the party in the ecclesiastical court ''without any difficulty'' ''*at what time the libel is grantable by the law.*'' The oath *ex officio* required a man to swear to tell the truth in the case before he had seen the libel, and the common law judges almost unanimously interpreted the statute's somewhat ambiguous phrasing to mean that the party should be delivered the libel *whenever he asked for it,* even before he had taken the oath. Such, however, was not and had not been the ecclesiastical practice; if such was the meaning of the statute, it had never been enforced.

[2] This appeared in various forms usually tangled with some other issue, as in Smith vs. Smith, I, *Croke,* 741, where a woman was excommunicated by the High Commission for adultery, and, paying no attention to it, was arrested by the pursuivants: she then sued out a prohibition on the ground that the High Commission had no right to enforce excommunication by breaking into her house to arrest her —it is not clear that actual violence was used—and the court sustained the writ.

Such, however, seemed to be the aim of the prohibitions issued at this time. By these writs, the judges attempted to dictate to the ecclesiastical courts what their decisions ought to be in cases concerned purely with ecclesiastical administration. A patron had presented a clergyman to a benefice, and, receiving notice from the Bishop that he was insufficient, presented a second. Meanwhile, the first candidate managed to remove the technical objections to his induction, and was duly admitted by the Bishop; whereupon the second candidate attempted to oust him by a prohibition. The judges upheld it, declaring that "the Bishop was a disturber, for he, having once refused him for insufficiency, cannot afterward admit him."[1] Even such a question as the exact status of deprivation was adjudicated by the common law, when the judge said that "this Church became void by the not reading of the (Thirty-Nine) Articles and there needed not any deprivation. For otherwise the Statute should be defrauded at the Ordinaries pleasure if he would not deprive."[2] This last sentence made it clear that the judges considered it their duty to oversee the episcopal execution of statutes. Again, they undertook to say what was and what was not assent to the Thirty-Nine Articles;[3] and did not stop there, but proceeded to decree what was simony;[4] when a marriage was or was not prohibited by Levitical law;[5] and, having already delivered a dictum concerning the bishop's power to deprive men, they added another informing him how a candidate ought to be admitted.[6] The Bishop had declared a man disqualified because he had not presented, within the time limit, his letters of orders as deacon, and various other papers required by the Canons of 1585. In his indignation at seeing another inducted into the benefice he expected to receive, the disappointed candidate sued out a prohibition to stay the Bishop from admitting another man. The common law judges declared that the reasons assigned by the Bishop ''were not causes to stay the admittance and the clerk is not bound to shew his Letters of Orders or Missive to the Bishop, but the Bishop must try him upon examination for one and other.'' This ruling was flatly contrary to the first Canon of 1585, which the Bishop had been trying to put into effect.

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[1] I, *Croke*, 7, Bishop of Hereford's Case.

[2] I, *Croke*. 680, Baker vs. Brent & Robinson.

[3] Id. 252, Smith vs. Clarke.

[4] Id. 685, Smith vs. Shelbourn.

[5] *Moore*, 907.

[6] I, *Croke*, 241, Margaret Palmes vs. Bishop of Peterborough.

Nor did the judges stop here their determination to rule the state ecclesiastical; for, according to the Articuli Cleri of 1605, ''Prohibitions are awarded upon these surmises, viz.—that the libel, the articles, the sentence of the ecclesiastical court, according to the ecclesiastical laws, are grievous and insufficient, though the matter there dealt withal be merely ecclesiastical.'' By this means, the common law judges issued ''consultations'' ordering the plaintiff in the ecclesiastical court to accept half his fees; or to be content with the payment of his legacy, and lose his costs; or the prohibition should stand and he would not recover anything at all.[1] Here, under cover of restraining the ecclesiastical court from holding plea of temporal matters, the judges were virtually deciding ecclesiastical cases over which they confessed that they had no jurisdiction; and tried to alter the sentences, and even the amount of costs assessed, so as to make them harmonise better with their own ideas of justice, utterly regardless of the fact that the ecclesiastical judge had not in the least overreached his powers.[2] The judges said in reply to this accusation that the bishops were wholly mistaken. Although much weight ought to be given to the judges' denial; and true, as it may very well have been, that they entertained no thoughts of unduly interfering with the ecclesiastical administration; there are enough prohibitions recorded by the common lawyers themselves, in their own reports, to demonstrate the essential truth of this contention.[3]

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[1] Articuli Cleri, art. xxiii.

[2] A very specious plea of this type was uttered by one of the judges in Wright's case, 38 Eliz. *Moore*, 425. ''Le prohibition n'est foundus sur ascun misdemeanor del spiritual judge en tener de plea del chose que il ne poit tener plea, mes est foundus sur ceo que lour ley ne point minister droit al party sur le plea le dismes: issint que les dismes et nemy le tener del plea est le substance del suit, per que le refusal del plea n'est material.''

[3] It is true that none of the Law Reports can be supposed to contain the actual words spoken, so that we are really judging the attitude of the

The years that followed the Articuli Cleri produced even more radical examples of judicial interference with ecclesiastical administration. In October, 1608, a minister was deprived of his benefice for simony, nonresidence, and gross neglect of his charge; and yet he secured a prohibition to suspend the sentence against him. Several judgments for adultery and incest were practically nullified, and the culprits allowed to go unpunished. A bailiff who had dragged people out of church when on their knees at the communion rail; a man arrested for "scandalous abuse" of the ecclesiastical courts in general; a man summoned to explain why he left his wife without support; another who asked a prohibition to avoid paying the costs of a suit which he had just lost at ecclesiastical law; all were granted prohibitions apparently without hesitation. One case particularly scandalised the churchmen. One Sunday, during the service at Burnham, a man named Green, who was probably a fanatical Puritan, assailed the minister, forcibly stripped his surplice from his back, and then, before the astounded congregation could recover its wits, escaped, carrying with him all the bread and wine which had been prepared for the communion, so that there could be no celebration of the Eucharist on that day. Yet he had no difficulty in obtaining a prohibition to stop proceedings against him in the High Commission.[1] Fuller's case was thought by Bancroft and the King to exhibit a singular desire to block the ecclesiastical procedure, without an atom of excuse that anything of temporal cognisance was at stake; and the awarding of writ after writ, all of which the judges successively refused to sustain, was, in the Archbishop's eyes, a scandalous abuse of power. Coke, however, was on pleasant terms with Bancroft and had done all that he could, by personal interviews with prelates and judges, to mend the breach between the King's Bench and the High Commission.[2]

court by the words of some reporter of dubious authority. Such, however, is the condition of all the old law books, and yet common lawyers usually see no harm in basing learned and close distinctions on their wording. If the Reports are assumed by the lawyers to contain the law exactly as it was delivered, historians may also accept them as valid evidence.

[1] Copies of the prohibitions issued in these cases will be found in Stowe MSS. 424, f. 158. et seq.

[2] So considerable had been his efforts that, on November 30, 1607, the King sent him a special message of thanks and begged him to "continew his advices and conferences with my lo: of Canterbury, for the settling of those differences between the King's Bench and the High Commission." Hatfield MSS. 123, f. 66, November 30, 1607. Holograph. Lake to Salisbury.

Meanwhile, the Archbishop had not been idle; and in these three years, 1606-1608, no less than six notable tracts appeared, espousing the side of the Church in these controversies. Dr. Cowell, the Regius Professor of Civil Law at Cambridge, and Master of Trinity Hall, had already figured prominently in the preparation of the Canons of 1604; and now published, in 1605, at Bancroft's suggestion, his *Institutiones Juris Anglicani,* in which he maintained the essential unity of both the ecclesiastical and common law in practice and procedure; and advocated the theory that inasmuch as the ecclesiastical jurisdiction was now united to the Crown, the temporal courts should cease their hostility to it, give up prohibitions and other writs by which they blocked its procedure, and admit those courts to a position of practical as well as legal equality. In 1607, he published the famous *Interpreter,* a little dictionary of political terms in which he sought to set before the English reading public such definitions of the various ordinary phrases then in use, as would in his opinion more nearly accord with precedent and history than did the views which were espoused both by the Puritans and by the common lawyers.

It now remained to show that, because of this great similarity between the common and civil law treatment of various subjects, the elevation of the ecclesiastical law and its courts to equality would involve no sweeping changes; but would, at the most, demand only a little forbearance on each side, and the concession of some technicalities in the granting of prohibitions. The task of developing the ecclesiastical offer of compromise was entrusted to Sir Thomas Ridley, another of those civilians who were probably responsible for the drafting of the Canons of 1604. He published, in 1607, a *View of the Civile and Ecclesiasticall Law,* which shows a thorough grasp of the situation and much learning.

Shortly before, the Bishop of Chichester had published, in 1606, a tract upon *Tithes examined and proved to be due to the Clergie by a divine right,* which contained much solid learning, of which Selden afterwards made good use. What Carleton meant by divine right was, after all, nothing more than biblical sanction, coupled to the consent of the early Christian Church. The sixteenth century and the Jacobean prelates did not mean by that much misunderstood phrase, that tithes or episcopacy were created by a special volition on the part of the Deity; but merely that their institution must possess the divine approbation, inasmuch as it was found to be authorised by Scripture. Two tracts, written by two converted Puritans, were directed against the Puritan ideals,—Thomas Sparke's *Brotherly Persuasion to Unity and Uniformity in Judgment and Practice,* (1607) and George Downame's *Sermon defending the honourable function of Bishops.* (1608) The former of these was intended to demonstrate the advisability and harmlessness of subscription and conformity to all the ceremonies and observances urged by the Canons of 1604; while the latter was a temperate and learned exposition of the basis for Episcopacy, as found in the writers of Christian antiquity.

Thus was the ecclesiastical contention made strong on paper. It now remained to be seen whether it could be supported in debate, for the number of prohibitions had gradually increased, and their interference had become so much more marked, that Bancroft really believed that they would bring the whole administration of the Church to a standstill. In other directions, too, the judges had been seeking to extend their jurisdiction. The Council in the Marches of Wales, and the Council of the North, the Court of Requests, the Court of Admiralty, and the Marshalsea, had all felt the pressure of the common law through these same prohibitions, and had all complained to the King. James was wroth, but finally came to the conclusion that he must renounce his hunting and appear in London, to settle the dispute in person. In February, and in June, 1608, therefore, the judges were summoned before the Privy Council to answer for their obstruction of administration in Wales and in the North;[1] and in November, the debates began upon the ecclesiastical jurisdiction.

The opening debate upon ecclesiastical matters[2] had been set for Sunday, November 6, and on that day accordingly judges and bishops met, by the King's command, in the Council Chamber at

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[1] Lansdowne MSS., 160, f. 431.

[2] The chief authority for these debates is the holograph notes of Sir Julius Cæsar, taken in the council chamber while the speeches were delivered. These have been preserved in Lansdowne MSS. 160, and are now fully utilised for the first time. We could hardly have found a more impartial and able note taker. Cæsar had taken degrees in civil law at Paris and Oxford; had been a judge of Admiralty; of Requests; of Chancery; and had also been a Bencher of the Inner Temple and twice its treasurer; but was, in 1608, Under Treasurer of the Exchequer. He had thus been connected with both parties, understood thoroughly both views of the controversy, but was at the moment connected with neither.

Whitehall.[1] Neither, however, were ready to argue their contentions; and James remarked that either the High Commission's Patent was too long or the judges were much too busy to read it; and therefore bade them attend again on November 13, when he hoped that they would both be better prepared. To that end, he desired them to communicate to each other their respective briefs, so that they might be ready to rebut the charges against them, as well as to make accusations themselves. He evidently expected to dispose of the whole difficulty in one long Sunday forenoon's debate. Having thus instructed them as to their duties, he added, as was his habit, a maxim:—all the Courts, he said, were under one God, one King, and one Country; and, therefore, he had an excellent expectation of them all. Before the ecclesiastics could depart, Coke, the Chief Justice of Common Pleas, broke out into a long tirade, stating that the High Commissioners never paid into the Exchequer any of the fines levied by that court, but appropriated them to their own use.[2] Bancroft lost no time in denying the charge, and the two waxed so warm over the difference of opinion that James interrupted, warning them "to take heede of heate in this business," for he intended to observe those who disobeyed his wishes, and would call them to account for it. With this premonition of things to come, the churchmen filed out and the judges remained to answer the complaints of the Lord President of the Council in the Marches of Wales.

The following Sunday, November 13, found the same assemblage gathered at Whitehall, with James in the chair, and the bishops and judges standing respectfully before him.[3] Cæsar recorded, with his usual fidelity, that the King opened the meeting and said that he had come neither to hear nor to make orations, but intended to conclude the troubles between the two jurisdictions. "Now," he continued, "to the prohibitions against the ecclesiastical courts;" where the issue was, whether a case concerning tithes should be removed to the temporal court because the defendant alleged a commutation.[1] Coke, as the spokesman for the common law, gave first, an exposition of the statutes of Edward II, Edward III, and Edward VI, and maintained that in stating that such cases of tithes were to be tried at ecclesiastical law, the statutes had not intended to take from the common law its exclusive jurisdiction over all matters temporal. He also laid particular stress upon the *non obstante* clause of the statute of Edward VI, which did, in truth, declare that the act gave the ecclesiastical courts no authority to hold plea of anything which the common law courts should of right and custom decide. Having thus laid down his premise, he deduced from it the "facts", that so long as no temporal matter became involved, the ecclesiastical courts had undoubted authority to proceed; but that, as soon as a matter of temporal cognisance became incident, even in a case which itself was clearly of ecclesiastical tenor, the whole question must be transferred to the common law courts and there decided. That the civil lawyers explained the law differently, he was well aware; but the law of the realm was the law, and it was the duty of the judges of the common law to expound it; and their interpretations must be received in preference to any reading adduced by men who, however learned in

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[1] Lansdowne MSS. 160, f. 428.

[2] Bancroft was right. In the Exchequer Documents, Q. R. Eccles. Bundle 12, will be found the original certificates made to the Exchequer by the Clerk of the Commission for the year 1592. There are a large number of such certificates in other bundles for varying dates from 1590 to 1640, but there seem to be none preserved for the period before 1590. Possibly Coke pursued his researches only in the earlier years. It is strange, however, that he could have been Attorney General for so many years and have displayed from time to time such ignorance of simple facts of ecclesiastical procedure.

[3] The authorities for this account are: Cæsar's Notes in Lansdowne MSS. 160, f. 424-423; John Hercy to the Earl of Shrewsbury in E. Lodge, *Illustrations*, III, 248; Sir Rafe Boswell to Dr. Milborne, in Hatfield MSS. 125, f. 36; Coke's account in XII *Reports*, 65; and a French MS. copy of the *Reports*, which differs somewhat from the printed version, Lansdowne MSS. 601, f. 109, and another copy in Harleian MSS. 4615, f. 16. These have been printed and discussed by the present writer in the *English Historical Review*, October, 1903. The principal results are: (1) that the date of the meeting was November 13, 1608, and not Novem-

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ber 8 or 10, 1607; (2) that the account given by Coke, with its famous sentence from Bracton, is very likely a confused recollection of several of these debates fused into one, together with a long list of precedents concerning the King's right to try cases in person, or arrest a man, which he drew up afterward, in order to leave posterity a justification of his attitude; (3) that none of the other authorities mention Bancroft as concerned at all. He was very likely present, but there is no evidence but Coke's to prove that he told James he might decide all cases in person, although Article I, of the Articuli Cleri, has usually been cited as evidence of that contention. This idea was current gossip at this time, for Bancroft himself, a little later, speaks of it in his letter to the Civilians, January 23, 1608-9, and denies it, probably with truth. The account in the text is an attempt to combine the most trustworthy of our material in a connected narrative.

[1] For a discussion of this debate, see *The Case of Modus Decimandi*, Mich. 6, Jac. 1, in the Common Pleas, XIII. *Reports*, 12, which, if the date is right, was decided before or immediately after this debate.

other subjects, were certainly not qualified to pronounce upon its intricacies.

With his usual quickness in dialectical matters, James perceived the logical consequences of Coke's argument. If these incident matters be tried at common law, he exclaimed, no case of tithes would ever be decided in the ecclesiastical courts. The judges were like the Papists, he thought; the Papists quoted the Scriptures, but wished their own interpretation of them to be accepted without question: the judges cited statutes to support their views and then reserved to themselves not only the execution of them, but insisted that only their elucidation of the meaning could possibly be correct. Nothing was more false, he continued, for the King was the supreme judge and under him were all the courts; and there was nothing to prevent his sitting on the bench himself, if he should choose, which, however, he would not elect to do. But his prerogative of calling disputes between the two jurisdictions before him, as the supreme head of justice, he would defend till death. Nevertheless, he would protect the common law. "The comon lawe protecteth the King," interposed Coke, with great dignity and solemnity, and needs from him neither grace nor favour. That is a "traiterous speech," shouted James in great anger, "the King protecteth the law and not the law the King. The King maketh judges and Bishops," and can therefore control them. "If the judges will interprete the lawes themselves and suffer none else to interprete, they may easily make of the lawes shipmen's hose." He denounced Coke excitedly and fiercely, with very likely a vivid memory of the day when, on a similar occasion (in Scotland, ten years earlier) Andrew Melvill had seized him by the sleeve, and, shaking him in no gentle manner, berated him as "God's silly vassal," and put forth such a claim to freedom from control as Coke had advanced. At length, James fairly rose from his seat, and shook his fist in Coke's face, apparently threatening to strike him. The Lord Chief Justice, frightened by this display of anger, "fell flat on all fower" and fairly grovelled before the King, beseeching pardon if his zeal had carried him beyond his duty and allegiance. This appeased the offended monarch not one whit; and thereupon Salisbury, who was related to Coke by marriage, knelt before the King and begged him to pardon such presumption. "And what hast thou to doe to intreate for him?" demanded James roughly. "In regard that he hath married my neerest kinswoman,'' replied the Lord Treasurer. The mediator was powerful enough to effect his purpose, and gradually pacified the monarch, who said, before he left the room, that he would not alter his former promise to maintain the common law. He then adjourned the further discussion of these topics until the Christmas holidays.

The fears of Sir Edward Coke being quieted, his resolution was correspondingly strengthened, and on the very next day he issued a prohibition to the High Commission which capped the climax of his aggressions. The case was clearly ecclesiastical, for the man who asked for the writ, was a minister who had been deprived for simony and gross ignorance. The reasons assigned by Coke for blocking the procedure of the High Commission, were, however, that the High Commission had, under the statute of Elizabeth, power merely to reform errors and heresies; and that no misdemeanours, which were not really serious offences (*offensa gravia*), were within its jurisdiction; next he quoted the famous clause from Magna Carta that no freeman should be imprisoned except by the law of the land; and lastly that by the pardon of 1572, the minister's offences were condoned.[1] Whatever the law of the matter was, could it not be fairly claimed that simony and gross ignorance, were, in a clergyman, ''errors'' of the first magnitude? Were they not serious offences from an administrative point of view? And was a man to be excused for offences committed in the year 1608 by a general pardon of the year 1572?

In this, and in succeeding prohibitions, the case of the common law against the High Commission was at length firmly set forth. Until Fuller, in 1607, had asked for a writ of Habeas Corpus on the ground that the High Commission, as established by the Letters Patent of 1605, was not warranted by the statute of Elizabeth, no such argument had, to our knowledge, been offered in any court. The idea had been hinted at in two tracts printed in 1590 and 1591;[2] but had never made any progress until Fuller developed it in his famous speeches and still more notable tract. The three lines of attack which were now developed by the judges in their prohibitions, like all the points upon which Coke had granted his prohibition, were valid only on the assumption that the Commission was, in its very institution, illegal. First came Fuller's contention, that the High Commission might not, under the statute of Elizabeth, legally fine or imprison any subject—a claim which concerned purely and simply the methods which the Commission had adopted in executing its decrees in those cases where no legal doubt could be cast upon its jurisdiction. It opened no question of jurisdiction, no question of the competency of the Commission to try a case. The second point, which now appeared for the first time, declared that the Commission might try "heresies, errors, schisms, abuses, offences, contempts, and enormities whatsoever" only when each of these crimes named was of "enormous" degree; or, in more modern phraseology, of an extreme degree. Here, too, appeared no slur upon the validity of the Letters Patent, for the argument merely asked whether or not those very Letters Patent had not limited the Commission solely to cases of a serious nature, and had not given it the position of a court for greater cases than the ordinary ecclesiastical courts might try, rather than that of a tribunal with a jurisdiction co-ordinate with that of all the ecclesiastical courts from the archdeacon's to the Court of Arches. Lastly, came the complaint that the Commission dealt with many cases such as tithes, legacies, matrimony, adultery, and the like, over which the statute of Elizabeth gave them no jurisdiction. The first objection had attacked only the methods which the Commission employed to execute its sentences; the second questioned only the degree of those cases over which the Commission certainly had jurisdiction: neither declared it illegal or threw doubt upon its institution. The last complaint, however, declared that cases, which were explicitly included within the phraseology of the Letters Patent, but not expressly mentioned in the statute of 1 Elizabeth, were outside its jurisdiction, because the statute and not the Letters Patent was the true measure of its competency. To admit this contention was to grant that the Letters Patent issued for sixty years had been, for the most part, entirely illegal, and to argue that the King did not possess the residual judicial authority and could form no new court except by consent of Parliament.

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[1] Stowe MSS. 424, f. 158.

[2] *The Treatisour* and the *Notegatherer*, and perhaps in the petitions of some few individuals.

As usual, however, the legal view was the least important, for what the judges really had in mind was the ruining of the Commission as an instrument of ordinary ecclesiastical administration. "To admit such broad powers in that court," said the judges very significantly in Roper's case, "should be to dissolve the court of the Ordinary, which is so ancient and inevitably necessary in many cases to the administration of justice in divers points of it, that without this, justice cannot be executed."[1] The High Commission was taking upon itself the burden of the ecclesiastical administration and robbing the ordinary episcopal authorities of their ancient power; and, inasmuch as they could not help themselves, the common law and the judges thereof should champion their case. The judges were to see, not only that the ecclesiastical courts did not encroach upon the common law, but also that they did not absorb each other's jurisdiction.

The action of the judges effectually roused the civilians practicing in the ecclesiastical courts, and, in November or December, 1608, they presented the King with a long petition about their troubles, and induced both Universities to follow their example.[2] In their own appeal, they enlarged upon the universal verdict of European nations that the civil law was most necessary; that in England it was accepted and used not only in the ecclesiastical courts, but in the Admiralty, the Chancery, the Court of Requests, and the Court of Wards. To discourage so generally accepted and so necessary an institution was inexpedient; but it was far worse to countenance these prohibitions which threatened to destroy it altogether, and to prevent any more men entering upon its study as a profession. James received all these documents graciously and once more ordered the judges to cease their opposition. The results, however, not being very evident, the judges and doctors of the civil law sought the Archbishop with a long letter, dated January 22, 1608-9,[3] couched in much the same strain as their petition to the King. They complained chiefly fo a "newe kinde of prohibition" which forbade the Judge of the Arches in London to call before him any man resident in any other diocese on the ground that it was forbidden by a statute of Henry VIII.[4]

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[1] XII *Reports*, 45 at 47, 5 Jac.

[2] Harleian MSS. 827, f. 1 a, undated. A reference to such a petition and to the petitions of the Universities in Bancroft's letter to the Civilians of January 23, 1608-9 enables us to date it approximately.

[3] Cotton MSS. Cleopatra F. I, f. 107, copy. The original was signed by fourteen of the chief civilians. *Other copies:* Harleian MSS. 358, f. 184. Rawlinson MSS. B, 202, f. 107b.

[4] The statute of 23 Henry VIII c. 9 did provide that none should be cited out of their dioceses by "any Ordinary (i. e. Bishop), Archdeacon, Commissary, Official or any other judge spiritual," except in certain cases, which then were enumerated in sufficient number to cover nearly

This appeal was thoroughly a work of supererogation, for, though Bancroft had kept himself in the background, like a good general, he had been industriously exerting all his private influence with the King and the judges, as well as directing the open onslaught upon the common law position. It is not unlikely that this letter was written to give the Archbishop an opportunity to reply to various charges, freely made against him, in a form which could be circulated privately, and which would refute the better than a public declaration proceeding from Lambeth Palace. Bancroft said that he wondered what they expected him to do that he was not already labouring to accomplish with all his might. He hinted that the common lawyers assumed, as did the Pope, that they possessed the quintessence of all wisdom and understanding; and acted "as if they had power to judge all men, but must be judged of none." "Do not be too prodigal and lavish," he went on, "in using this letter of mine, lest I be maligned afresh. Rumor already has it, that by my meanes a course is entered into which tendeth to the overthrowe of the Common Lawe and to depriue his Majesties subjects of their Birthright; that I labour by all the waies I cann devise to make the King believe that he is one absolute Monarch and maie iure Regio doe what he list; and that I am an Enimie to all the Professors of the Common Lawe; And all the said imputations are cast uppon mee, (as god knoweth very unjustlie) and for noe other cause but for that I desire that his Majesties temporall Judges might keepe themselves in some reasonable sorte within ther own lists and not invade as they do, his Majesties Ecclesiastical Jurisdiccon. . . . They affect to much to be popular which was neuer approved in anye Commonwealth by menn of solide and grounded iudgement, nor is perhaps tollerable in this. Doth he whoe saieth that the Kinge with the advice of his most honourable privie Counsell assisted likewise by other the Cheifest learned menn of this kingdome in both his Lawes, is the fittest iudge to decide and determine the questions now risen betwixt both his supreme Iurisdictions: doth he (I say) affirme that the King maie doe what he list, or doth it followe that if the Kinge shall take uppon him to be a Iudge in these Causes, it is not unlike that he will hold the

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every possible contingency, with an almost complete reservation of the archiepiscopal power. The Arches and the High Commission were, by any reasonable reading of the Act, exempted from its provisions.

like Course in all other Causes, to the preiudice of his temporall Iudges, who pretend for sooth in effect that they are the Ephori betwixt the Kinge and his subiectes, and that therfore they his said subiectes are thereby depriued of ther Birthright: It is giuen out howe earnest the Comons of the Realme haue bin in divers parliaments; that ther Causes might not be decided by the Kinge, and his Counsell, but should be left to his temporall Judges: But who knoweth not the imperfections which haue ever generally attended the Lower Howse who doe for the most part more affect ther owne designes than the benefitt of the Comons that chose them; Gentlemen and Justices of the peace knowinge ther owne strength in the County with Jurymen (whoe in manie Causes must depend uppon them) wer ever unwilling to come before the Kinge and his Counsell wher they knowe noe packinge would serue ther turne: wheras the poore Comons who are often tymes oppressed by such menn, wer ever most desirous to flee to the Kinge, as being persuaded that they should receaue from him better iustice then from all his temporall Iudges: And in the present case touching the Marches of Wales are they not the busier sort of Gentlemen that oppose themselves against that iurisdiccon as being loth to be curbed by it: whereas might they bee left to ther Juries before the Judges they would be able to shift better for themselves. . . . Soe that the partiall humors of other men ought not to be asscribed unto the Comons, who doe expect ther birthright from the King beinge pater patrium rather than from his iudges, what being compared unto his Majestie are but their stepfathers: He is the fountain of all iustice, from whence who so immediately draweth is sure to receaue the same with all clernes and purity . . . did the Comons knowe howe in the practice of lawe they are used they would not be soe farr in loue with the temporall Judges as they the said Judges would pretend they are and as indeed they ought to be wer they better used by them. . . . Whereupon I maie conclude that wer the Judges soe carefull that the poore Comons might haue ther birthright: they would not verbally seek to bring other men in hatred, but reallie and in deed be more respectiue of them."[1]

Encouraged by the favourable reception accorded to these petitions, forty-four officials and procurators of the Court of Arches presented Bancroft with two more lists of grievances, asking relief for "this declininge Jurisdiction in soe dangerous and violent opposition." They mentioned that the "multitude of prohibitions" had been especially great since Bancroft's accession to the See of Canterbury.[1] However, as the Archbishop said, the civilians and ecclesiastics had no need to beg him to remember them; and very likely these petitions were, as had been the case with the Puritan petitions, campaign documents rather than the expression of personal suffering, drawn up to impress the King and perhaps the common law judges, with the number and worth of the men who espoused the cause of the Church.

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[1] Cotton MSS. Cleopatra F., II, f. 121. January 23, 1608-9, printed in Strype, *Whitgift*, III, 385.

Meanwhile, there had been much turning of precedents at the Tower, where the records of the Courts and of Parliament were stored in cellars and garrets under the nominal care of a paid official, called the Keeper of the Records. To him, Bancroft wrote both in November, 1608, and in March, 1609, requesting him to allow men to conduct researches and copy documents.[2] On February 4, 1608-9, the Lord Chancellor sent post haste an order from the King to one of the Tower officials to send immediately to the Archbishop, a copy of a certain document in which Henry VI was said to have settled with the clergy what their jurisdiction was to be, and in which some three score classes of suits were enumerated.[3] In order to make sure that every scrap of confirmatory evidence in existence would be forthcoming, letters were sent from Lambeth to the various bishops ordering them to search among their records for precedents, "concerninge prohibitions, how and in what cases they should be granted or the maintenance of the Jurisdiction and liberties of the Church."[4] Coke,[5] on behalf of the judges, and Bacon[6] and Salisbury[7] on behalf of the King, were also pouring over the musty piles of parchment. All this diligence betokened two things: first, that all parties were now convinced that the dispute concerned not the simple rectifying of a few technical abuses in the issuing of prohibitions, but the real basis of the jurisdictional authority of both systems of courts; and, secondly, that the day of complaints was passed, and with it had gone the time when assertion and denial had seemed adequate. Every one must now be prepared to demonstrate the truth of his conclusions by an appeal to history.

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[1] Cotton MSS. Cleopatra, F., II, f. 320, no date.

[2] Petyt MSS. 538, 17, f. 281 and f. 271.

[3] *Ibid.* 538. 17, f. 279.

[4] Letter from Bancroft to Bishop of Norwich. Cambridge University MSS. Dd. 3. 64. f. 68. February 16, 1608-9, Original, signed, much faded. The original return, signed, including prohibitions from 22 Elizabeth to James I, with some statements about jurisdiction is in Cambridge University MSS. Mm. VI. 57, f. 11-14, but adds nothing new to our information.

[5] Petyt MSS. 538. 17, f. 270 (December).

[6] *Ibid.* 538. 17, f. 279, bis.

[7] *Ibid.* 538. 17, f. 275, (August).

Furthermore, Bancroft had completely shifted his ground. When he drew up the Articuli Cleri in 1605, he thought that everything might be settled quickly and easily; and that an appeal to justice and equity would be productive of some compromise as to the technical difficulties which were then ostensibly the only points at issue. Experience, however, had soon demonstrated to him, that the judges were resolved to maintain their whole position, abuses and all: that it was futile to meet such arguments with a simple plea of expediency, for they waived that aspect of the question aside, with the remark that the law was a matter of fact, not a question of expediency to be changed and altered as a tailor cut his cloth, to suit the whims of individuals. Thus forced to change his ground, the Archbishop lost his best argument, that prohibitions, as then practiced by the common law courts, were an unqualified abuse of a valid legal authority. He was also deprived, by the change of the issue, of the natural sympathy which he could have counted to enlist on his side. Furthermore, while the judges had been the real aggressors and still were the attacking party, Coke's excellent generalship had shifted the burden of proof from his own shoulders to those of Bancroft; and had made the latter actually appear to be the assailant. Coke had been called on to defend his conduct, and had replied in substance that his practices were justified by the law. If, therefore, the Archbishop meant to continue the conflict, he must assume the rôle of plaintiff and attempt to prove, by precedents and an appeal to legal history, that the judges were wrong. By this clever manœuvering, the judges forced the Church to state its whole case before they themselves did more than insist, in general terms, that they had been within their rights, or talk broadly and vaguely about precedents and statutes. In the plan, there was, however, nothing essentially new, for it was only the application of the rule of law that the plaintiff must make out a *prima facie* case before the defendant is endangered. Coke treated the appeal of Bancroft to the King as if it had been the filing of a declaration in his own court, and, when the Archbishop had proved abuses against him, insisted that he should also demonstrate that the thing abused was in itself illegal; that, where Bancroft had simply alleged that Coke used his legal authority wrongly, he should also prove that he had a right to certain jurisdiction of his own, which had caused the granting of the writs complained of as stretches of the powers of the common law. Coke refused, in short, to meet the Archbishop upon the question of abuses; and insisted that the only issue concerned the legality of the clergy's own jurisdiction. It was indeed perfectly true, that the latter point was still unsettled, but that had not been the issue which Bancroft had raised. The result, of course, was to make Bancroft seem in the wrong where he had really been in the right. If Coke had the law on his side, certainly Bancroft had equity upon his: and with him, too, was the necessity of the Church, which could not admit the claims of the common law and preserve a semblance of administrative coherence and vigour.

In May, an attempt was made to compromise all these differences, legal and otherwise, by an amicable conference between Fleming, the Chief Justice of the King's Bench, attended by one of his colleagues; Coke, the Chief Justice of the Common Pleas, attended by one of his fellow judges; and Ellesmere, the Lord Chancellor.[1] They met at York House, on May 13 and the latter handed to the rest of them a list of the points on which so much controversy had taken place, and asked them to state their views privately to him. After deliberating for a week or so, among themselves, they met him again on Sunday, May 20, and read a reply,[2] drawn up perhaps by Coke. Less was apparently said about law than about expediency, for, when Coke tried to change the issue, Ellesmere reminded him that all his precedents were neither here nor there. The Archbishop had not complained that the common law courts could not issue prohibitions in proper cases, but that the judges had issued hundreds upon which they had themselves been compelled to grant consultations, a fact which demonstrated clearly enough, from their own mouths, that the prohibitions had been improper. This Coke did not attempt to deny, but said that technical flaws in the prohibition might account for many of the consultations; and, at any rate, the *modus decimandi* was a custom, and concerned nearly every parish in the kingdom and "an infinite number of subiectes," and so, ought to be tried at common law. Ellesmere at once retorted that the number of persons affected made no difference one way or the other, for Coke himself had made the issue the rule of law, and not the question of expediency. Taking advantage of the fact that many of the prohibitions were brought by the clergy themselves, Coke then argued, that, unless the common law contention had been both right and equitable, so many of the Archbishop's own supporters would not recognise it.

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[1] Holograph notes by Coke of these conferences are in Holkham MSS., 677, f. 252, f. 252 b, now used for the first time.

[2] The second paper is not dated, but it seems hardly likely that the judges would have answered without private consultation together. The habit of the time was to hold such conferences on Sunday, so that May 20, a week later, seems a probable date.

The usual technical points were discussed without result, until Ellesmere brought into prominence one which had hitherto slumbered: the judges must not prohibit the ecclesiastical suit, unless one of the parties was at that moment actually suing at their own bar. This would have been a great limitation, for a prohibition did not transfer the case to the temporal court, and most suitors did not seek any such result, but merely wished to stop the proceedings at ecclesiastical law indefinitely and have no further trial of the case at all. Coke at once bristled with suspicion and retorted that if any error had been committed by the courts, it could be corrected "in a superior Court of record and *not in any other place whatsoever.*" Full precedent existed for all the judges' actions. Let them be seen then, retorted the Lord Chancellor, with a plain hint that he much doubted whether or not they would bear much scrutiny. In all good time, replied Coke with dignity, they would be produced in proper judicial investigations and "not before any other out of the right course of the Lawe, for *none can iudge of them but the iudges.*" "But what, said the Lord Chancellor, yf the Kinge shall commande to see your Booke Cases and presidents, to whom I sayde, I praye your Lordship, let me aunswere your lordship with another question. To what end should his Majesty see our Book Cases and presidents? His Lordship said, to reade and consider of them. Oh, my Lord (said I) your Lordship in your wisdom knowes what would follow of that."[1]

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[1] This seems to mean: how could the King's reading of the precedents settle the case, for he has no learning to understand them, and no right to make a decision as to their contents, if he did. But, if he should

The debate then turned to the High Commission, where Ellesmere received little satisfaction. The judges still called for specific instances of the prohibitions complained of; and said that, until they had in their hands the very words objected to, they could not defend themselves. From his wide reading, Coke was able to produce a case or two on the newer objections raised; and cited for one, Atmer's case, where it was said the Commission could not punish a man for working on a holiday. Whereupon, Ellesmere remarked, with ill-concealed scorn, that "it was a pretty case," and proceeded to quote other precedents out of his own memory to support the right of the Commission to impose fine and imprisonment. The conference bore little fruit, and was only a continuation of the earlier phase which was now passing.

The continued aggressions of the judges in granting such extreme prohibitions, and the failure of the Lord Chancellor to convert them to his view of the question, brought the contending parties once more before the King. James had much confidence in his own learning, and especially in his forensic powers; and thought he would be able to argue the obstinate lawyers into acquiescence in his position. He reckoned without his host. Nevertheless, the gathering which assembled at Whitehall on May 24, 1609, was imposing enough to have shaken the resolution of a strong man.[1] James sat as usual in the chair of state, with the Council on one side of him, and the bishops, headed by Bancroft, on the other. In front of them stood the two Chief Justices, Coke and Fleming, with two of their associates; and, a little at one side, were several of the ecclesiastical judges and civilians, whom Bancroft had long been preparing to plead in behalf of the Church. The King first expounded well the ideas which had gained such an ascendency over his mind: his determination to allow no innovation in the realm; his desire to be impartial and to give each court the exact jurisdiction to which custom and law

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read them and try to enforce his decision, that day would mark the downfall of judicial independence.

[1] Our accounts of this debate are fragmentary: Cæsar was tired of writing out precedents and took only the heads of the arguments. Coke's account in XIII *Reports*, 37-47, relates very clearly only to the first day's session, and seems, as usual, to lay too much stress on his own part, and too little on any one else's; but Cæsar's notes are so meagre that we must perforce use Coke. The Chief Justice was undoubtedly a truthful man; but his prepossessions and prejudices were so strong that he was simply incapable of understanding the position of the churchmen or of doing them justice.

entitled it; and his intention that none of them should encroach upon the other. As the head of justice immediately under God, and as protector of the rights of his people, his duty required him to put an end to this harmful clash of jurisdictions. The chief difficulty was, he continued, a perfectly practical question: if a parson sued his parishioner in the ecclesiastical court for tithes and the latter alleged a *modus decimandi,* in which court should that case be tried—the ecclesiastical or the temporal? He commanded the judges to justify their position. Bancroft, however, knew well that nothing could result from such a demand but a repetition of the statements which would allege much and explain little. Coke had turned the tables upon him, and if a speedy settlement was desired, there was nothing to do but accept the situation. He therefore asked leave to speak first on behalf of the Church. He brought into prominence the argument from expediency: that a jury trial was not a proper method of deciding tithe cases, because no twelve men could be found in a parish who were really impartial, and, indeed, who were not themselves as vitally affected as the defendant. In many cases, the *modus decimandi* in question was a uniform rate for the whole parish, and the delivery of such a case to a jury for decision was nothing less than allowing them to adjudicate their own suit. If no such difficulty appeared, and the custom concerned but one man, experience showed that laymen were chary of giving a verdict in favour of the vicar, partly on account of general prejudice and partly because they were afraid that their verdict might some day be a precedent which would militate against them. The Archbishop laid great stress upon the well-known fact that juries were often corrupt and said that he could not agree to deliver the question which concerned the whole future of the Church to a dozen ignorant and possibly venal men.[1]

Dr. Bennet, the Judge of the Prerogative Court, followed him with a long speech against the granting of any prohibitions at all. He took up Cowell's and Ridley's contention, and said that, since the two jurisdictions were united in his Majesty, the old power ought to be abolished which had been readily countenanced in the common law courts as long as they needed to defend themselves from the Papacy. If trouble came, let the judges take their grievance to the King and rest assured that his energy and discretion would restore to them their rights. Turning to the question of fact, he declared that there could be no doubt but that the ecclesiastical courts ought to decide the general status of tithes, where the issue was whether they were due or not from a particular individual. No one could deny that all these other points were incidental parts of that one main issue; and therefore, he concluded, let the court, which indisputably ought to try the main issue, try all its adjuncts and incidents. He warmly denied the judges' oft-reiterated charge that the ecclesiastical courts would not receive a plea of *modus decimandi.* He declared that they always allowed a suitor to make the plea, but required him to prove it before they accepted it; and that he could see neither equity nor justice in crediting a bare statement which was so palpably to the interest of the man who made it.[1] Coke said, in his account, that he omitted much of Bennet's speech, because it was "impertinent." After Dr. Bennet spoke Francis Bacon, "and," remarks Coke, "in effect said less than Dr. Bennet said before."

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[1] Fulbecke, a common lawyer, in his *Conference of Laws,* puts these words into the mouth of the Parson in his dialogue: "We parsons," said he, "have much impediment by Prohibitions, and many times wrong, when they come to triall; for the countrie people which are the Iurors, who have no more desire to paie their Tythes then the Diuel hath to love his entercourse with seauen deadly sinnes, . . . if any prohibition concerning Tythes come to be tried by them, ar as sure to passe against the Parson, as an old chimney is sure of blacknes—But let any matter come to be tried touching common, which concerneth themselves and their owne profit, they will as surelie go with the comoner as the cloudes goe with the northeast wind."

Thus assailed, Coke shifted his ground, and in his reply attempted to make clear the new footing upon which he wished to place the whole argument. The civil lawyers had steadily considered it an open question, upon which no irrevocable decision had as yet been made, and where, by mutual forbearance, some workable compromise might be arranged. The Chief Justice now stated that the issue had been entirely misapprehended. It was not a matter "*in statu deliberativo,* but *in statu judiciali,*" and was not in the least "to frame or devise new laws, but to inform your Majesty what your law of England is." There was in reality, he went on, no difficulty not already settled by the law clearly and properly, so as to fit all circumstances and heal all contentions, provided only the decision might be found and accepted. The judges had laboured hard, had turned many times the pages of their books of precedents, and had at last found the remedy which would infallibly produce peace and harmony. They were unanimously agreed, said he, that the trial *de modo decimandi* ought to be by the common law, by a jury of twelve men; and in affirmation of that decision he would be able to cite the common law, the statutes, and "infinite judgments and judicial proceedings long times past, without any impeachment or interruption." Here was indeed a change in the situation! What purpose was there in all these debates, if the solution not only existed, but had already been found!

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[1] See the Articuli Cleri, art. xv, which declared the suggestion to be "notoriously false." Nearly all the tracts of the time take the same position. It must be confessed that, to a modern student, the ecclesiastical courts had behind them not only equity, but also the great bulk of the common law precedent.

The debate which followed ranged over a variety of subjects, that were successively treated in much the same way, until the disputants came to prohibitions and technicalities, and there tarried. Every question taken up was of long standing, and was not brought by the debate any nearer settlement. Despite the fact that it was fully four years since the Articuli Cleri had been issued, and no less than ten years since the bishops broached their complaints in 1598, (during all which time the discussion had been seriously maintained) the debates had not yet drawn away from those elementary matters which had developed from the real divergencies which lay deeper in the intricacies of the problem. Even after debates in November and a conference in May, and a great study of the records, the argument still ranged a wide field, where technicalities and precedents with varied solutions and refutations were still numerous, and were pursued apparently as ends in themselves. Nor had the element of personal recrimination been as yet exorcised. Every one thought that his own arguments were so convincing, and so unanswerable, that he could not fail, if he could once be heard. The researches of the Archbishop and of the Chief Justice had rendered each confident that this time he could crush his adversary upon technical points alone. Of course, the real issue was, as to whose interpretation was to be authoritative; who was to prevail among the interpreters? This, however, was a constitutional issue of the first magnitude; and contained wrapped up in one phrase,—the relation of the church courts to the common law courts; the definition of the royal prerogative, and the attitude of the judges toward it; the legal status of a statute; the position and authority of Parliament; and much more which was not directly and specifically considered until the Parliamentary struggles of the reign of Charles I.

James grew tired of the wrangling and the repetition of so much which had already been said, and declared that Coke had not as yet satisfied him. He would maintain the common law, he added, and would give its judges as much respect and honour as any of their predecessors had had; but he wished them to confer again with each other, and to keep within their own limits, ''without vexation and molestation done to his subjects and without delay or hindering of justice.'' He concluded that ''he saw much endeauor to draw water to theyr seuerall mills, and therefore aduised them to think among themselves of some moderate course wherin the goode of the subject might be more respected then theyr particular iurisdictions.''[1] And so the debate was postponed till after Trinity Term.

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[1] Carleton to Edmonds, Stowe MSS., 171, f. 183 holograph.

CHAPTER X

DEBATES UPON LEGAL CONTROVERSIES, JULY, 1609

The effect of all this argument over the validity of ecclesiastical jurisdiction, soon became apparent by the small amount made of its process and procedure by various individuals of more than dubious character. A week or so after the debate just recorded, a case occurred which brought this fact home to Bancroft in a most forcible manner. News having been brought to him that a certain Christopher Roper was concealing Jesuits at his house just outside London, the Archbishop judged it expedient, for one reason or another, to arrest them. With the pursuivants of the Commission he sent the constables of the district, so that Roper could not object that there was not authority enough before him. Roper, nevertheless, refused to admit the officers; but sent his wife to interview them, so that he might swear, (if by chance he afterward fell into the hands of the Archbishop) that *he* had never refused to admit them. His lady demanded a warrant under the seals of six of the Privy Council; and when the pursuivant answered that his warrant was from the Archbishop and three High Commissioners, "shee flurted at it," wrote the angry prelate to Salisbury. However, she informed the messenger that he might come in if he would not search certain rooms, which the owner of the house, Lord Howard, from whom they leased it, had reserved for his own use. So transparent a ruse deceived no one; and the pursuivant, leaving the constable and his fellows on guard, posted back to London for instructions. Bancroft then penned a letter to Roper, saying "that he should be better aduised and suffer the search;" and letters to the justices of the peace and constables of the district commanding them to guard the house until further notice; and with these sent the officer back. Then he sent a messenger to Salisbury and begged him either to tell the King of the matter or to send him a warrant under the seals of six of the Council, for search the house he would. "Your Lordship may preceaue by the premises of what estimation his Majesty's sayd Commission (through the insolent contempt thereof by some and the audacious and factious disposition of others) is growne to be: which is a high degree toward the neglect of greate authoritie." Here, at the interesting point, we lose the thread of the story and its conclusion.[1] In all this, the Archbishop saw Coke's influence; and he found additional traces of the same spirit among the other judges, for, during the summer assizes of 1609, Justice Warburton released a Catholic who had been imprisoned by the High Commission, on the ground that the Commission could not fine and imprison.[2]

James had thoroughly approved the main contentions of the Church in the debates, but he was far from satisfied with the legal showing made by the Archbishop and his advocates. Believing that the crown lawyers could do better, he ordered Hobart and Bacon to prepare briefs for the new debates which were appointed for the Trinity Term. After an interval of a little more than a month, the contestants again assembled on July 6, 1609, at Whitehall.[3] Coke took the floor and made some considerable concessions in regard to the issuing of prohibitions, which, had they been made in 1605 or 1608, might have settled the dispute for the time being and have avoided the issue which the judges had forced. That the latter should have made any offers at all shows how serious they now believed the matter was. Coke's first statement, however, was no concession: they would grant prohibitions, he declared, only "in such cases when they may doe it by the law, by the statutes, and by the custome time out of memory of men, videl. by judgments at comon lawe confirmed." That answer was too general, interrupted the King; they ought to specify exactly their rights, and above all ought not to be judges in their own case.

They would grant no prohibitions, continued Coke, except in open court; they would insist upon an examination of the truth of the suggestion and require proof of it by two witnesses; they would summon the party whose suit was to be prohibited and hear his arguments. They would see to it that no such writ contained more than the suggestion presented by the suitor; they would even go so far as to force the party seeking the prohibition to give bond for the charges which his opponent might incur in securing a consultation. They would shorten the length of the writs issued; would prosecute the cases speedily; and, if the defendant was poor, provide counsel for him at their own expense. If these offers had been effectively carried out, most of the technical grievances would have been rectified.[1] That they were not accepted as satisfactory is the best possible indication of the distance which now separated the parties, of the greatness of their mutual distrust, and of their consciousness that more than a mere technicality was at stake. Of course, the only guarantee that these reforms would be made or would be permanent, was the word of the judges. In their good intentions Bancroft and James had little confidence.

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[1] Bancroft to Salisbury, June 7, 1609. Hatfield MSS. 127, f. 67. Original, signed.

[2] Lambeth MSS. 933, f. 25.

[3] Cæsar's notes in Lansdowne MSS. 160 f. 416-415.

That was all very well, said the King, but it was not to the point. The question was not how they might best reform their practice to decency and order, "or to open a fair gate for those suits," through which they could be regularly drawn before the common law courts for adjudication; but whether the common law should decide questions of *modus decimandi* at all.

Coke was somewhat taken aback; and, divining that the cause of opposition lay in their doubts of his sincerity, spoke of his good faith, of his search for the truth, and of the necessity of his obeying the oath he had taken as Chief Justice to preserve the law of the land. But he maintained his "former opinion that *modus decimandi* is merely belonging to the cognizance of the temporal judges, by a continual possession euer since the law of 2 Edward VI, by eighty learned Judges at the least." Read the statute, he begged them, and examine carefully its wording. Clearly, he said, a piece of land must not pay double tithes; if it is to pay by a *modus decimandi* in money, it cannot also pay in kind. The *modus decimandi* is a custom, and "customes are parcell of the lawe of England," as was declared by the statute of 19 Edward III. The common law may therefore try the case, and therefore may issue a prohibition to prevent its trial at ecclesiastical law.

Not so, retorted James. The statutes were made to facilitate the proper payment of tithes and not to enable men to evade them; to allow the ecclesiastical courts to try suits brought for tithes, and not to take away from that jurisdiction all cases of tithes, whether brought by clergy or laity. No act should be so construed as to defeat its object; and the common law interpretation, and the unlimited number of prohibitions issued under specious pleas, tended, in some parts of England, to stop the payment of tithes altogether. He quoted many statutes in support of his contention. After some further debate between Coke and Ellesmere, the sitting adjourned.

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[1] Some of them at least seem to have been carried out in later years, but the evidence is so fragmentary, and susceptible of two interpretations, that no more definite statement can be made.

On the morrow,[1] Bacon argued at great length that the Common Pleas could not issue original writs, and, hence, could not grant a prohibition to the ecclesiastical courts, unless the same case was also being heard at its own bar.[2] Bancroft had already raised the point in the Articuli Cleri; and if it could be maintained, it would go far toward stopping the deluge of prohibitions from the Common Pleas, most of which were issued when a case was not impleaded at common law. Coke replied with an equally long array of precedents, and both he and Bacon asserted that their own list was not once crossed or contradicted; Bacon declaring that his contention was demonstrated, not only by the books of the Chancery but out of the mouths of the judges of the Common Pleas themselves.[3] In rebuttal he said the disagreement of precedents was nothing extraordinary, for in Edward VI, the judges had disallowed lists of them and in the eighth year of Elizabeth nearly a hundred had been rejected at once. The King said, in conclusion, that the Lord Chancellor's books were far preferable to the Lord

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[1] July 7, 1609. Cæsar's notes in Lansdowne MSS. 160 f. 414-413. We also have the speeches in full. Cæsar's notes and the ''Preface'' to Coke's Answers has made it possible to date and arrange a great mass of papers, and to ascertain definitely their authorship. These it is believed have now been utilised for the first time; and have also been shown for the first time to be the work of Coke, Bacon, and Hobart. In most of the MSS. repositories, the numerous copies of these speeches now in exisand dated, and such varied authors assigned, that an attempt has been made to collect a bibliography of the copies of these speeches now in existence. None of them have been printed, although the substance of Coke's replies can be traced in the II, III, and IV *Institutes* at various places. The important speeches by Bacon and his connection with these debates is now shown for the first time. Mr. Spedding was able to find but little about Bacon's doings in 1608 and 1609, but we can now make good the deficiency.

[2] ''A Breuiar of the selected proofes: prohibitions out of the Common Pleas noe Recorde being before them.'' Cotton MSS. Cleopatra, F, I, f. 215; Tanner MSS. 120, f. 25; Petyt MSS. 511. 16, f. 228; and 538. 55, f. 5 b; Rawlinson MSS. B. 20, f. 224 and B, 157, 18 b, and C, 731, f. 48.

[3] Indeed a clear precedent, which no quibble could explain, took exactly Bacon's position. Brook's *Abridgement*, (1573), f. 165 a, No. 6, a case of 38 Henry VI. This is rather damaging to Coke's asseverations that his view was ''not once crossed or contradicted.'' It was Coke's weakest point that he steadfastly refused to recognise the plain fact that the common law decisions had been far from uniform or unanimous.

Coke's precedents, and quoted Justice Yelverton as stating, in Fuller's case, that the Common Pleas might issue no prohibitions except when the case depended before them. There the debate was adjourned for the day.

When it was resumed the next morning, on July 8, the King commanded Sir Francis Bacon to deliver the opinion which he had required him to prepare upon the subject of treble damages for tithes.[1] This dispute had arisen over the interpretation of a clause in the statute of 2 and 3 Edward VI. For the fault of not separating the tithes the statute imposed a penalty of double their value, payable to the man to whom the tithes were due; and expressly ordered him to sue for this double value at ecclesiastical law. For carrying away the tithes, which he had separated, the Act gave, logically enough, a greater penalty than it had bestowed for the failure to separate—that is, treble instead of double value; but with the singular want of precision so often found in early English statutes, had omitted to name the party to receive this triple value or the court where he could recover it. Coke, seizing upon the omission, had argued with plausibility in sustaining his prohibitions, that, whereever in a statute no mention was made of the court where the suit should be brought, the case must be tried at common law. In this interpretation lurked great possibilities. By its aid, the Chief Justice was able to declare that the parson might recover double value for his lost tithes at ecclesiastical law and treble value at common law. Nor could it long be doubtful which side the clergyman's poverty would teach him to espouse.

Therefore, when Bacon rose to combat this position, more rested upon his argument than the demonstration of a small legal technicality. He said that it was clear that when a statute gave a new penalty for an offence of a nature not regularly impleaded at law in a particular court then no doubt the statute must be interpreted to mean that the trial should be at common law. Here, however the offence in question was old and had been of ecclesiastical cognisance for centuries; further proof, then, than an inference from an omission must be demanded before such suits could be heard out of the regular course. This proof was not forthcoming, and a careful reading of this Act and others made it perfectly clear, he thought, that the intention of Parliament was the exact opposite. By this Act, that of 32 Henry VIII was confirmed in entirety, which expressly gave cognisance of all such cases without exception to the ecclesiastical court. Secondly, a succeeding clause of this very statute of Edward VI forbade bringing suit for such a detention of tithes before any but the ecclesiastical judges. Nor was there any inconsistency in awarding a penalty of double value of the tithes which the layman had failed to separate, and one of treble value for those which he carried away. From the uniform practice of sixty years in the ecclesiastical courts came added confirmation; and, by the confession of the judges themselves, no such contention as they now espoused had been heard of until thirty-five years after the passage of the Act.

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[1] "A Breuiate of the selected proofes touchinge the Recouerie of the treble value in the spirituall Courtes." Petyt MSS. 538. 55, f. 2 b. and 511. 16, f. 161. Rawlinson MSS. B, 157, f. 12, and B, 202, f. 161, and C, 731, f. 56.

With this argument, logical, coherent, and abounding in precedents and cogent evidence, the King was delighted; and, turning to Coke, remarked, that he wished from him "a sincere and plaine signification of the truth without substraction or addition;" and that, when he excused his want of preparation on the day previous he had declared himself ready to argue this topic.[1] Coke replied authoritatively but succinctly that the proper interpretation of that clause required the vicar to sue at common law, if he wished to recover the treble value of his tithes, for at ecclesiastical law he might regain but double their value. James was vastly piqued, and made no pretense of concealment, for he evidently thought that he had Coke at last in a dilemma from which he could not extricate himself. It was "against the rule of all reason and law," he declared in his oracular way, "that any Court of England or elsewhere should preiudicate truth by iudging in a cause of question of Iurisdiction between that Court and Others." This plethora of precedents, that poured like a river from the mouth of the Lord Chief Justice, seemed to him of small worth. "Not a multitude of allegations but the soundness of some few must prevail." He was sorry indeed that Coke was so ill-disposed to place confidence in the impartiality of his sovereign for the settlement of this difficulty. He need not fear: a King might be trusted to speak the truth. As for the Lord Chief Justice's denial of his right to decide the question, that was another matter: and there his Lordship was flagrantly in the wrong: he might sit as King

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[1] Here Cæsar's Notes again become our authority. Lansdowne MSS. 160 f. 405-408.

"in every court, in common pleas as well as in King's Bench."

Taking their cue from the King, the ecclesiastics began to accuse the judges of issuing more prohibitions since the debates of the previous November than in all the years that had preceded. The judges, caught a little off their guard and somewhat surprised, answered with less than their usual assurance; but especially defended the prohibition which forbade any ecclesiastical judge at London to cite a man out of his diocese. In reply they were told that the statute of Henry VIII to which they referred[1] concerned only the bishops; that the Archbishop was metropolitan of his whole province and was not affected by that statute at all. The Common Pleas and the Lord Coke, interposed James, sought to be interpreter of both God and men, of laws of both human and divine, of laws civil and canon and of all other laws whatsoever.

When the assembly came to order again, after the royal joke, they listened to Hobart, the Attorney General, argue on behalf of the High Commission.[2] He showed that to admit the truth of the first two of the judges' contentions would completely nullify the Commission's powers. Even if the statute of Henry VIII, which forbade citing a man out of his diocese, applied to the Archbishop as metropolitan, it certainly could not apply to the High Commission simply because the Archbishop was a member. At any rate, if the High Commission might not summon men from all parts of England, its power was gone. Similarly, if the Commission was limited to those cases with which the individual bishop might not deal, "it will follow that it must meddle with none at all, for there is noe case ecclesiastical in effect from the highest to the lowest over which the ordinary (i. e. the Bishop) hath not jurisdiction." The rest of the judges' objections, continued Hobart, depended solely upon the construction of the Act of 1 Elizabeth c. 1. Their Lordships had taken it upon them to deliver opinions that the Commission might try only criminal cases; and those only when of the most serious nature; and that it possessed no authority to use fine and imprisonment as penalties. The basis of their contention was that the Commission could not exceed the provisions of the statute which gave it birth, and that, in the clause of that statute which sanctioned the Commission, none of these powers were specifically enumerated. From this statement inevitably followed the conclusion, said the Attorney General, that all the Letters Patent hitherto issued for sixty years, three of which had been drawn by the Lord Coke himself, were illegal.

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[1] 23 Henry VIII c. 9.

[2] "The grounds of Prohibicons to the high Commission and the Answers unto them, by Sir Henry Hobart, Attorney Generall," delivered July, 1609. Stowe MSS. 420, f. 18. Cotton MSS. Cleopatra, F, I, f. 128, Petyt MSS. 511. 16, f. 117 and 518, f. 86.

But the truth of the matter was, he showed, that the statute did not sanction a Commission to use the powers enumerated in the Act, but ''to exercise, use and execute all the premisses according to the tenor and effect of the said Letters Patents: any matter or cause to the contrary in any wise notwithstanding.'' The Commission was to find the definition of its powers not in the Act, but in the Letters Patent. And, even if the judges' arguments were granted, that the Letters Patent were limited by the Act, where could be more general and inclusive phrases found than these: ''to visit, reform, redress, order, correct, and amend, *all* such heresies, errors, schisms, abuses, offences, contempts and enormities *whatsoever*, which by any manner of spiritual or ecclesiastical power, authority, or jurisdiction, can or may lawfully be reformed, ordered,'' etc.[1] Was there here any limitation of the court to cases which the bishop might not hear, or to criminal cases only, or to enormous and serious crimes? The King broke in with a pun: ''The Common pleas,'' said he, ''have granted enormous and expensive prohibitions.'' The argument that the Commission might not employ fine and imprisonment, continued Hobart, was based upon the fact that the statute of 1 Elizabeth c. l. had restored to the Crown the ancient jurisdiction ecclesiastical. Under the old law, the judges had claimed that whatever were the powers of the King, the bishops had not had power to fine and imprison; and, therefore, could not possess it as High Commissioners under a new Act which, confessedly, only reinstated the old jurisdiction. The Act did not give them new powers, but merely confirmed the old; and the mere fact that they were now High Commissioners did not allow them to do things which, as bishops, they could not do. But, objected Hobart, how can this be true, for ''where the statute saies that they shall execute the premisses by virtue of this act according to their commission any matter or clause to the contrary notwithstanding, can there be a more expresse contradiction to the statute then to saie they shall not execute but by the former lawe?''

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[1] 1 Elizabeth c. 1. s. viii.

Coke was taken by surprise, and to that indefatigable note-taker Cæsar, seemed "somewhat inclinable to allow of all that," but he requested time to answer in writing. To prove the care with which the Commission was administered, the Bishop of London remarked that no case was considered by that court until it had been scrutinised by the Archbishop's chief judges. The King was triumphant, Bancroft complacent, Bacon and Hobart elated, and the judges somewhat crestfallen. In the full flush of anticipated victory, the onslaught was continued by Hobart with a speech upon the sole right of the judges to interpret the statutes of the realm.[1]

This was by far the most important point of all the issues and upon it rested the validity of nearly all the other arguments, for the cases of the High Commission, of the *modus decimandi,* and of the treble value depended almost entirely upon the interpretation of a statute or statutes. Here, at last, the contestants were approaching the real constitutional issue: who was to prevail among the interpreters? Were the common law judges to have the sole right to expound any and every statute of the realm, whatever its subject matter might be; and was this prerogative of theirs so firmly established by custom and law, that the King's residual right of judgment had merged with it, precluding his personal exercise of it any longer? Such was the real question which neither Coke nor Hobart phrased exactly, but which may be easily traced in their utterances. From the claim of the judges that they alone could interpret statutes, declared Hobart, flowed various "inconveniences." Cases, which a statute had been expressly passed to give to the ecclesiastical jurisdiction, were prohibited on the ground that the common law judges alone could construe that statute. However indirectly a statute might come under consideration, its existence became at once a pretext for a claim that the whole question ought to be tried at common law. Wherever, too, a statute had allotted to a purely spiritual offence a temporal penalty, to be executed by the Chancery and sheriff, the existence of that provision was used as an excuse to insist that the nature of the offence, although admittedly ecclesiastical, must be decided by the common law. In his opinion, said the Attorney General, the statute, once passed by Parliament, to modify or amend some part of the ecclesiastical law, became as much a part of the King's ecclesiastical law as if it had been enacted by Convocation and was to be interpreted solely by the ecclesiastical courts. If the statutes concerning temporal questions were to be interpreted by the common law judges, on the ground that they alone possessed the requisite learning to comprehend them, *pari passu,* the statutes concerning spiritual things should be construed by the ecclesiastical judges. Let each system of courts hold plea of all matters under all the statutes which concerned those subjects over which it had peculiar jurisdiction.

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[1] "Prohibicions grounded upon the posicon that the interpretacon of statutes belonge to the judges of the temporal Cortes." (by Henry Hobart.) Stowe MSS. 420, f. 24 b. Cotton MSS. Cleopatra, F, I, f. 132 b. Petyt MSS. 158, f. 90 b. and 511. 16, f. 140, and 538. f. 1.

Salisbury, the Lord Treasurer, approved this position. Those who must execute a statute should interpret it. He thought the action of the common law judges had had serious results by freeing the guilty from the consequences of their crimes, besides the dire effect of robbing the Treasury of the fines they would otherwise have paid. Let the judges stick to the common law and statute law, but let them not ask to expound all statutes "bycause some of them concerne other learninge whereof they cannot judge." To turn the debate from these dangerous subjects, Coke began again the offers with which he had commenced two days earlier, to grant no prohibitions except on proof of the surmise. As for these precedents of Hobart's the exchequer cases "in matters of the increase of their own jurisdiction" were not to be treated as "infallible troths," though they were otherwise deserving of every credit. When he came to consider the increase of his own jurisdiction as judge of the Common Pleas, however, he was ready enough to insist that only the records of the Common Pleas were of any value. No one, however, seems to have thus answered him. Instead several at once retorted that there was plenty of other precedent to maintain their conclusions.[1] Sutcoth, one of the judges of the King's Bench thirty-five years before, and Popham, the Chief Justice only just demised, had both sued in the ecclesiastical courts for the recovery of tithes under these Acts of Edward VI, and it might be presumed that men of such acknowledged legal standing would not have adopted that method of litigation, if they had believed such suits could rightly be impleaded at common law.

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[1] At some time during these days' debates, an argument was delivered entitled "The Arguments contra for the Archbishop of Canterbury. That the King hath power in his owne person to heare and determine all kinds of Causes, when it shall please his Majesty as appeareth by these reasons following." Additional MSS. 25270, f. 29; Exeter College, Oxon. MSS. 154, f. 71; Royal MSS. 18, B, XIII; Lansdowne MSS. 211, f. 148-236; Tanner MSS. 120, f. 141; Harleian MSS. 4892, No. 2; Petyt MSS. 518, f. 51; Cotton MSS. Faustina, D, VI, f. 93; and Cleopatra, F, II, f. 287; Hargrave MSS. 278, f. 726-780 and 493, f. 272-383; Rawlinson MSS. B, 202, f. 193 b, and C, 738, f. 107. This may have been written by Cowell or Ridley or by Bancroft himself.

Tired of the five or six hours' wrangling and orating, the King rose to end the debate. The *modus decimandi* was a subject large of extent, he said, and concerned the undoing of the clergy on the one hand, and the prejudicing of the laymen in their trial on the other. He would not now decide the matter.[1] As for the three statutes of tithes, they neither helped nor hurt his position; and for the present therefore he commanded the judges to execute the Lord Coke's offer and issue no more prohibitions without proof of the surmise. The power of the Common Pleas was uncertain: the Lord Coke had alleged precedent to support one theory of its institution, while Sir Francis Bacon had upheld the contrary with an equal volume of precedent. Both could not be right. The Lord Chancellor should look into the question and report the truth to him before the Michaelmas Term. The High Commission had been "impeached many waies by unfitt and uniust prohibitions," for which he wished the Lord Coke to answer in writing before the next term; and, in the meantime, to stay all prohibitions to that court and complain to him, when he found his jurisdiction infringed. So with the other matters discussed: let all action on either side cease until he could settle the dispute. He had no intention, he went on, of altering any part of the common law, notwithstanding rumours to the contrary. That law consisted, he well knew, of Magna Carta and other statutes, the customs of the land, the year books, and the judgments of the judges of the land. Likewise, he meant to favour the Church, which he would have flourish as the green bay tree, so long as it grew neither popish nor puritan. Neither Church nor common law could stand in safety without the other's aid; and he wished therefore that there might henceforth be a forbearance of opprobrious speeches and libels, both spoken and written; and that they would "live together like brothers without emulation."

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[1] Bacon had prepared an elaborate argument on the point which was delivered to Coke in writing sometime in the vacation. See "A Breuiate of the cheife proofes selected touching the modus decimandi." Tanner MSS. 280, f. 432; Petyt MSS. 511. 16, f. 165; Cotton MSS. Faustina, D, VI, f. 48 and Cleopatra, F, I, f. 185; Hargrave MSS. 278, f. 630 and 493, f. 201; Rawlinson MSS. B, 157, f. 1 and B, 202, f. 165 b, and C, 731, f. 63; Harleian MSS. 7161, f. 111 b.

The debates were over, and although the question was not definitely decided one way or the other, the Archbishop was, in everybody's eyes, the victor by a considerable margin. It had certainly been demonstrated to the entire satisfaction of the Privy Council, who had by no means unanimously favoured the Church, that he was right on the issue of law as well as upon the question of expediency. Upon the latter was his greatest triumph, for he had made perfectly apparent to every one the harm the judges were doing to the Church; and how effectually they were hindering that indirect and quiet reform which he had hoped to achieve. There was no doubt rejoicing at Lambeth and jubilation at Doctors' Commons, for could there be any doubt as to what the royal decision would be? But, while the civilians were still exchanging congratulations, and while Bancroft was planning a new campaign on the subject of ecclesiastical incomes for the next Parliament, an angry but determined man was busily turning the pages of black-letter law tomes, unrolling plea rolls, and preparing his answer to the statements of the Archbishop's advocates.

Sometime during the fall of 1609 or spring of 1610, Coke presented to the King five treatises, knit into one, which contained his reply to the charges against him and his brethren. It was a noble monument of judicial learning, honesty, and integrity, and displayed that admirable courage in the maintenance of his convictions for which he deserves the unqualified respect of posterity. In some ways, this was the greatest of all his legal writings, for it turned probable defeat into virtual victory, and silenced the arguments of the Church.[1]

All five topics, he said, were concerned with "the exposicon of statutes concerninge Causes ecclesiasticall, viz. whether Acts of Parliament made by the Kinge, the Lords, and the Commons of the

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[1] The preface is most valuable for us, because he reviews the history of the controversy and gives us much information. "A Preface to the Answeres of the Judges of the Courte of Comon Pleas unto the obiections and Arguments made (on behalf of the Lorde Archbishop of Canterbury) against Prohibicons." Cotton MSS. Cleopatra, F, I, f. 116; Hargrave MSS. 237, f. 91; Petyt MSS. 511, 16, f. 106 and 538. 55, f. 26; Rawlinson MSS. B, 20, f. 113 b, and C, 731, f. 26.

Realme concerninge ecclesiasticall matters should be interpreted by the judges of the Lawes of England or by the ecclesiasticall judges.[1] The true and cleare discussion of this point would end the whole controuersie.'' Full and firm came his decision. ''Acts of Parliament made by Kinge, the Lords and Comons, are parte of the Lawes of England and are to be interpreted by the judges of the laws of England, and not by any Cannonist or ecclesiastical judge. And this is expressly proved by many authorities and judgmentes reported in our bookes of Lawe that no ecclesiasticall Judge ought or euer pretended to interprete any act of Parliament. If an act of Parliament do authorize the ecclesiasticall judge that which before he could not doe, the judges of the Common Lawe shall judge and determine whether the ecclesiasticall Judge haue pursued his aucthoritie given by the statute, or by Color of that statute hath done wrong to any of the Kinges subiectes or no.'' ''The breach or not performance of that statute is temporall and is punishable by the temporall lawe and thereupon a prohibition lieth. And therefore the exposicon of such a statute doeth belong to the temporall judges. So as if the aucthoritie of our bookes in all ages, the continuall practice and experience of former tymes unto this day, and the resolucion of all the Judges of England may giue satisfaction in a question of Lawe (there being no one opinion in all our bookes or euer motion before this tyme made to the contrary) then we hope the Lo: Archbishop (being now truly informed hereof) will herewith rest satisfied.''

In regard to the High Commission, he declared, as had Hobart, that the whole issue hung upon the rendering of the statute of 1 Elizabeth c. 1.[2] The first clause was, he said, general, granting them power to exercise ecclesiastical jurisdiction in the broad sense and to act generally in such matters as should be specified in the following clauses. The second clause contained the particular points of the general authority of the Queen with which Parliament meant to give the Commission power to deal, that is to say, with all "heresies, errors, schisms, abuses, offences, contempts, and enormities whatsoever." The particularly of this clause was a restraint upon the generality of the former, for the last word "enormities" was meant to describe and expound all those that preceded it, and to give the Commission jurisdiction not of all "offences," for there was indeed nothing which could not be included under that head, but of the above-specified subjects when of an "enormous" degree. The Act did not mean to erect a Commission which should supplant the ordinary ecclesiastical authority, but to give the bishops some extraordinary power for dealing with the popish priests for whom the censures of the English Church had no fears. The Letters Patent should include only those powers enumerated in the Act, for the statute meant not that the Commission should derive its authority from any Letters Patent the Queen might see fit to issue, but from such Letters Patent as conformed to the restrictions imposed on the Commission by Parliament. The Commission, therefore, might fine and imprison only in serious criminal cases.[1]

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[1] ''The second question propounded on the behalfe of the Lord Archb: of Canterbury touchinge the Exposition of Statutes concerning Ecclesiasticall causes; whether the same belong to the Judges of the Realme or to th' interpretation of the Civilians and Canonists. A question neuer made in any of our bookes, nor moved by any in any tyme heretofore.'' Tanner MSS. 120, f. 180; Exeter College, Oxon, MSS. 154, f. 79 and 157, f. 9; Cotton MSS. Cleopatra, F, I, f. 159 and Faustina, D, VI, f. 118; Hargrave MSS. 278, f. 780 and 493, f. 313; Rawlinson MSS. B, 202, f. 147 b, and C, 731, f. 51; Petyt MSS. 511. 16, f. 143 and 518, f. 9 and 538. 55, f. 17. Harleian MSS. 827, f. 28 and 1299, f. 128.

[2] ''A declaration of the true grounds of Prohibitions to the High Commission and the authority and reasons approving the same with Answeres to the observations made to the contrarie wherein amongst other thinges it is mayntayned and proved that the high Commission may in diuers cases Lawfully fine and ymprison and particularly what those cases be, so as neither of those propositions be true: The Commission

As to the statute of Edward VI upon tithes, Coke declared that "for the treble value of Prediall tithes not set out or divided according to the said statute, the partie grieved ought to sue in the Kinge's Courtes and cannot sue for it in any ecclesiasticall courte."[2] He said it was absurd to suppose that any statute would

cannot fine and ymprison in any case or the high Commission may fine and ymprison in all Causes belonginge to Ecclesiasticall Cognizance; compassed and comitted to writing by the Commandement of his most excellent Majesty and the dispatch thereof often urged in his Majesty's name by the Late Archbishop of Canterbury." (1610) Stowe MSS. 420, f. 1; Additional MSS. 25270, f. 89; Hargrave MSS. 237, f. 100; Rawlinson MSS. B. 202, f. 133 b. and C, 731, f. 1; Petyt MSS. 511. 16, f. 123 and 538. 55, f. 7 and 518 f. 71 b.

[1] The twelve judges had expressed opinions directly contrary in 1577. Attorney General to Burghley, Lansdowne MSS. 27, f. 46. Holograph.

[2] "The thirde Question that hath bene made on the behalf of the Lo: Archb: of Canterbury is whether if tithes in kinde be not divided and set furth, an action may be brought in any of the Kings Courts at Westminster by the partie grieved for treble damages grounded upon the statute of 2 E. 6. Cap. 13." Cotton MSS. Cleopatra, F, I, f. 173 and Faustina D, VI, f. 134; Hargrave MSS. 278, f. 813 and 493, f. 333; Harleian MSS. 1299, f. 143; Tanner MSS. 120

grant a penalty of double or treble value in one and the same case; and here he totally ignored the point on which Bacon had laid so much stress, that the double and treble forfeiture was *not* provided for the same case. "If any person or vicar, etc.," concluded Coke from these premises, "will sue for the double value, he may and ought to sue for the same in the Ecclesiasticall Courte by the expresse wordes and purvieu of the statute: but if he will sue for the treble value, he must sue for the same in the Kings Courtes at Westminster.[1] So as seeing this matter to be in statu Judiciali hath bene so iudicially and so often determined for lawe by all the judges of the Lawe, we persuade ourselves it will this case giue satisfaction to the Lord Archbishop himself." Next followed a very long and bulky defence of the jurisdiction of the Court of Common Pleas, in the matter of Prohibitions,[2] upon which Bacon had thrust home Bancroft's contentions. The subject was vastly important to Coke and received his most careful attention, but it need not detain us.

Last of all, the Chief Justice proceeded to answer the objections to the common law attitude upon suits *de modo decimandi.*[3]

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f. 197; Exeter College, Oxon. 154, f. 110; Petyt MSS. 511. 16, f. 153 and 518, f. 15 and 538. 55, f. 34; Rawlinson MSS. B, 202, f. 155 b; Lansdowne MSS. 161, f. 258.

[1] This position, although technically sustained was afterward tacitly abandoned in the law courts. They decided that inasmuch as the suitor ought to sue in the ecclesiastical court for the recovery of his tithes which had been detained, and could not have them in the temporal court, he could receive at common law merely treble value of the tithes, but could not recover the actual tithes. On the other hand, he might sue at ecclesiastical law for the tithes, and recover them *plus double their value.* So that the suitor would receive the same in both courts. See II, *Croke,* 70; III, *Croke,* 560; *Moore,* 873, 915.

[2] "In what Cases the Kings Court of Comon Pleas may graunt Prohibicons by Lawe and Many Presidents of former tymes and in what not." Cotton MSS. Cleopatra, F, I, f. 215 and Faustina, D, VI, f. 12; Tanner MSS. 247; Harleian MSS. 1299, f. 1; Hargrave MSS. 278, f. 545 and 493, f. 133; Rawlinson MSS. B, 202, f. 227 and C, 731, f. 169. Tanner MSS. 120, f. 15.

[3] "An Aunswere to the Chiefe points selected touchinge the modus decimandi, wherein the question is whether upon a suyte in the spiritual courte (for tithes in specie) and a prescription of Custome de modo decimandi pleaded a Prohibicon may be brought in the temporall Courts, or whether the spiritual courte may not trie that Issue and so sentence the entire Cause." Cotton MSS. Cleopatra, F, I, f. 185 and Faustina, D, VI, f. 58; Hargrave MSS. 278, f. 653 and 493, f. 216; Harleian MSS. 1279, f. 55; Rawlinson MSS. B, 202, f. 172 b and C, 731, f. 73; Petyt MSS. 511. 16, f. 174 and 518, f. 37 b; Additional MSS. 25270, f. 4; Tanner MSS. 120, f. 90: Exeter College MSS. Oxon. 154, f. 132 b. See also the *Case of Modus Decimandi.* Michaelmas, 6 Jac. I, 1608, XIII *Reports,* 12. If the date is right (which is doubtful) this decision was delivered before or during the debates of November, 1608.

"Where there is a *modus decimandi,*" said he, "we are of opinion that the parson, vicar, etc., sueing for tithes in kinde and thereby seeking to infringe the custome of *Modus decimandi* claymed by the parishioners, that this custom ought to be tryed by the Comon Lawe and not in the Ecclesiasticall Courtes." Here, however, as in the matter of treble value, he rested his whole case upon the assumption of the very thing which the civilians so hotly contested. He premised throughout that the *modus decimandi* pleaded by the parishioner was indubitable and of long standing; and that the parson was unjustifiably trying to break it. He therefore put the ecclesiasical judges in the wrong, from the start. The latter however, declared again and again that where the parson was really seeking to encroach on an established custom, he received small sympathy, and that they upheld the *modus decimandi* themselves. What they insisted upon was that the common law courts should not censure them for refusing a *modus decimandi* which the parishioner could not satisfactorily prove. This much established to Coke's satisfaction, he next alleged that commutation was paid in money; that it was therefore custom, hence a temporal matter, triable solely at common law. The pages of the treatise fairly bristled with precedents and statutes, which Coke produced from the stores of a vast erudition.

The immediate and visible results of the controversy were slight: the judges continued to grant prohibitions, and no royal decree was issued of any sort. Technically, the questions raised by Bancroft never were decided; but certainly by common agreement victory was at the time tacitly acknowledged to rest with Coke and the common law. Nevertheless, with some exceptions, we find no more such radical prohibitions put forth as had caused such trouble in the earlier years of Bancroft's archiepiscopate; and after Coke had been removed from the Bench in 1616, the aggressions of the common law courts against the ecclesiastical courts practically came to an end, although the judges, even under Charles and Laud, were ready enough to speak boldly when the occasion seemed to warrant it. In fact, once their claims had been accepted, the judges were willing to recognise how serious the literal enforcement was to the administration of the Church, and in practice ceased in 1610 to issue prohibitions, except in the proper and normal course which the ecclesiastical courts readily countenanced.

CHAPTER XI

THE PARLIAMENT OF 1610
AND THE AUGMENTATION OF ECCLESIASTICAL INCOMES

The conflict with the common law was tacitly closed: the Archbishop accepted Coke's precedents and maxims, and the Chief Justice agreed that he would not enforce his legal rights to the detriment of the Church. The High Commission, therefore, continued till 1640 to fine, imprison, and cite men out of their dioceses; on the other hand cases of treble value and of the *modus decimandi* were still prohibited when the decision in the ecclesiastical courts had been neither just nor equitable. The new phase resembled strongly the early period, 1586-1603, before the strife had become keen. Scarcely had this danger been warded off, than the Puritans in the House of Commons delivered another determined assault upon the Established Church. The Archbishop met them with a scheme for the increase of ecclesiastical incomes which was even more detailed and comprehensive than his plan of 1604. Then, at the critical juncture, when the secular priests needed all possible liberty to gather signatures to their petition to the Pope for Catholic bishops, Parliament renewed its demand for the strict enforcement of the penal laws. Last, and by no means least, Episcopacy in Scotland was established in the form it maintained for twenty-five years. But Bancroft was undaunted at the difficulties before him: "I could not but condemn myself, being Archbishop of Canterbury, if I should not with all my strength and for the preventinge of future mischiefs stand up in the gap, which is sought to be made in the very form and frame of the Church."[1]

The Puritan leaders in the House of Commons wasted no time in opening the battle.[2] Their policy and the bills in which it was comprised had by dint of repetition attained definite form; and, within a month, they had pushed most of them through the House with vigour and precision. At the second sitting for business, February 15, Nicholas Fuller, not one whit abashed or humbled by his recent imprisonment, appeared with the bills against non-residence and pluralities; and within a fortnight had the satisfaction of seeing them passed by the House and sent to the Lords with a special commendation. On March 12, he brought in two more bills, one abolishing the subscription required from ministers, and the other making illegal the bishops' use of their own seals in judicial proceedings.[1] Both were duly read and committed. Other time-worn measures again saw the light: the bill to settle a preaching minister in all parsonages appropriate; the bill against scandalous ministers; one for the reform of the Prerogative Court; and the one upon which so much stress had been laid in the preceding session, the bill for the restraint of canons not confirmed by Parliament.[2]

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[1] Dalrymple's *Memorials,* I, 23.

[2] Detailed references to the *Journals* have been given in only a few cases because it is as easy to trace a reference by the date as by the page. In the State Papers, and in the report on the Lords' Manuscripts, *Hist. MSS. Commissioners Report,* III, a number of bills are referred to which may concern this session. It is impossible to arrive at any conclusive decision about their dates.

Since 1607, however, the leaders had seen that the condition of ecclesiastical incomes was a fact which must be recognised; and that, unless they made some advances in the direction of the augmentation of tithes, it was idle to expect to win the royal assent to other measures. The new bill on pluralities, therefore, contemplated the increase of the value of benefices;[3] and, on the strength of it, the House by another clause forbade pluralities. Even Bancroft admitted that the House was at last animated by a sincere desire to make every benefice in England able to provide adequate support for a learned preacher.[4] The difficulty, now as ever, was to agree upon the manner by which that most desirable result should be effected. As might be anticipated, the parties were widely sundered: Bancroft advocated a return to tithing in kind, while the House of Commons wished to increase the value of the poorest vicarages and curacies by diminishing the revenues of the bishoprics, of the cathedrals, and of the richest rectories. "They meant to rob Peter to pay Paul," said the clergy bitterly. In fact, the scheme which found most favour with the laity merely redistributed the income which the Church already possessed, on the supposition that some men had too little because others had too much; and thus tacitly denied Bancroft's chief complaint, that the revenues of the Church as a whole were insufficient, and that the equal division of the present income would diminish what was now adequate without properly relieving what was inadequate.

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[1] This is a good example of the difficulty of dating these bills. The editor of the *Calendar* dates this March 26, 1606, (S. P. Dom, Jac, I, XIX, no. 85.) but another copy in Lansdowne MSS. 172, f. 246, is dated in Sir Julius Cæsar's hand, March 9, 1609-10.

[2] See Dalrymple's *Memorials*, 247, for what purports to be a copy of this bill, dated May 12, 1610. It is at least a revised copy, if the date is correct.

[3] A paper in S. P. Dom. Jac. I. XXVII, no. 21, seems to belong here. "Som observacons upon the Statutes of 27 Hen 8, and 32 H. 8, and 2 E. 6. for the paiement of Tythes." Seventeen pages, dated by the *Calendar*, May 18, 1607.

[4] "It is true that now there is a fair overture, of an earnest, to make every parsonage and vicarage a competent living for a learned preacher, but the issue thereof I do greatly suspect, that it will only tend (through the undervaluing of men's deserts) to the tying of particular preachers to one parsonage or vicarage of the better sort, and so rather to deprive them all indeed of sufficient living, than to make the lesser benefices able to maintain men so qualified, as now it is with such earnestness desired."

While the House and the Archbishop were disagreeing over the subject of ecclesiastical incomes, the House was censuring the Archiepiscopal policy upon another point. Cowell's *Interpreter,* a book published in 1607 as a part of the literary defence of the Church, had been read with scorn and rage by the common lawyers and their friends; and now they found themselves at last in a position effectively to express their disapproval. It was, said the irate lawyers, a book written to attack the common law, part of a conspiracy against the law of the land.[1] A committee had been appointed to read the book and reported that it was "a Book very unadvised and indiscreet tending to the Disreputation of the Honour and Power of the Common Laws," but found it extremely difficult to agree upon any vote of censure which the House would accept. Finally, the Attorney General was called upon, who suggested at a conference of the two Houses, that the definitions given for the words "parliament," "prerogative," and "subsidy," offered the Commons the only legal pretext for proceeding against the author, inasmuch as they could punish only for contempt or breach of privilege. The Commons accepted his advice with ill grace, for apparently they had set their hearts upon censuring the views expressed in the book in regard to the common law, which they felt had been attacked. In the end, Cowell was reprimanded by the King and his book suppressed by proclamation.[1]

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[1] *Commons Journals*, I, 399, 400. February 23, 24, 1609-10. "Preaching against prohibitions. Books in print against the Common Law. Mr. Martin. Because the Common Law vouched false—suppress our liberties—consult with Civilians—with the Council—with the Judges—consider what is to be done. . . . Mr. Hoskins. Produceth many other Treatises containing as much as Dr. Cowell . . . Sir Anthony Cope. But there are Confederates. Whether from beyond the Sea or here. A matter of great consequence."

With the bills on pluralities already sent up to the Lords, with Cowell censured and his book suppressed, the Commons turned their attention to the re-drafting of the petitions and grievances which had already been mooted in earlier sessions. The King was in dire need of money; his debts were large, and the present receipts did not meet the current expenditures; so that the Puritans, who held the balance in the House, confidently expected to buy his consent to the "reform" of the Church by some concessions on the Great Contract; and thought that, inasmuch as the latter was already being discussed, it was high time they came to some conclusion upon the grievances. On March 22, "upon the King's motion," a committee had been appointed for religious grievances, the members of it to be "any that will come." After a month of discussion, Sir Edwin Sandys reported to the House four grievances: the failure to execute the penal laws against the recusants, the silenced ministers, pluralities, and the abuse of excommunication.[2] Mr. Brook voiced the old contention that the ministers had been illegally deprived because they had been proceeded against under the Thirty-Sixth Canon, for matters for which they were not liable under the statute of 13 Elizabeth. c. 12. Sir William Cope declared that, since the present Book of Common Prayer had not been confirmed by Parliament as the Book of Edward VI had been in 1559, no clergyman or layman could be punished for offences against it. Let us not treat these questions as grievances, interposed Mr. May. Let us petition, but let us not mention the word grievance. Before he could carry the point, the debate closed for the day. On the morrow, Sir Dudley Diggs attempted to take up the issue where Mr. May had left it; and said that, if the names of the ministers whom the House wished to relieve could be secured, a petition in their favour might be offered, without making a general grievance of the fact that they had been deprived. He was supported by Sir Richard Spencer, who declared that he saw no reason "but, without offence to God, or to their own consciences, they may subscribe." For the nonce, the radical leaders were willing to accept this compromise, and Sir Francis Hastings said that he favoured the suppression of the word "grievance" and the preparation of an humble petition on all four points. Emboldened by the turn of the debate, Mr. Carleton begged the House not to teach his Majesty how to rule nor to count a grievance what was done according to long-established custom. Nothing could be a grievance, he went on, which was grounded upon law, as the King himself had said three years before; let us ask for some relief for the ministers, but let us say no more of their restoration. What is done, is done; and, above all, let us not question what has been done legally. To this Sir Herbert Crofts, another radical, assented, but Henry Yelverton, Bancroft's antagonist at the conference in 1606, reminded the House that the bishops had agreed in 1606 to reinstate some ministers who had been illegally deprived and that they had not yet fulfilled their promise. Next day, therefore, the House proceeded to draw up a petition and not a bill of grievances.

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[1] *Commons Journals,* I, 404, 415. Lansdowne MSS. 513, f. 81-92. The Printed Proclamation, March 25, 1610, original edition, is in the British Museum.

[2] *Commons Journals.* April 23, 1610. A copy is in S. P. Dom. Jac. I, 53, no. 123, endorsed "Grievances, 1609," but there is nothing to show which one of the many drafts this is. Dated by the editor April 25 (?) which could not by any possibility fit the date "1609" even if it meant 1609-10.

The Great Contract had, in the meantime, been progressing in long conferences between the Houses and in longer committee meetings.[1] The propositions they were discussing contemplated a permanent grant to the King in exchange for the burdensome feudal dues, such as purveyance and wardship, which not only caused unnecessary hardship to the subject, but failed to provide enough revenue to meet the ordinary expenditures of government. The same economic events, which had depleted ecclesiastical incomes, had so reduced the royal receipts that the exchequer was nearly empty the greater part of the time. Bancroft had been the chairman of the Lords' Committee and had spent a great deal of time and thought over the solution of the issue. By May 5, however, it became pretty clear that unless the King gave way to the Commons, nothing but failure could result. The House was eager to commute the old dues into a yearly payment derived from some different tax, but was unwilling to make the sum large enough to ensure the King an income which would meet even his present needs. So, at the conference of the two Houses early in May, Bancroft delivered as it were a funeral sermon over the project.[1] He was sorry, he said that the contract had not been carried, for "the King's necessity had been notably, plainly delivered." Apparently the Commons thought that, in the midst of a flourishing and populous realm, the King ought to lack food for his table, unless he could provide it himself from his own resources,—an attitude which was equivalent to nothing more nor less than letting him shift for himself. He took it to be a postulate of speculative divinity, however, that the Kingdom must support the King. The arguments to the contrary sounded well, but would prove on investigation to be of no value.

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[1] The best account of the debates on it is in the *Debates of 1610* edited by Dr. Gardiner for the Camden Society.

The arrival of the news on May 8, that Henry IV of France had been assassinated by a fanatic instigated by the Jesuits, was the signal for an anti-catholic demonstration in Parliament and in England generally. The Gunpowder Plot, the complicity of Garnet and various rumours and reports in 1608 and 1609[2] of attempts to murder James, now became doubly suggestive and inspired a terror such as had not been felt for years. A bill on the oath of allegiance, whose scope is unknown,[3] although it was in all likelihood directed against the failure of the bishops to administer the oath strictly, had just been read a first time, but was abandoned as too mild for the new crisis. On May 18, William Bulstrode astonished the House by relating a long tale of priests who held conferences in prison, of secret masses sung in jail, of the resort of ladies to the imprisoned priests, and of the great lenity with which recusants were treated. Feeling ran high in the House, and Dr. James tried to turn it to account in his defence of the High Commission, by pleading that the latter did more service toward discovering recusants than all the magistrates in the Kingdom. It helped, however, very little. By May 25, many members had had opportunity to acquire "information" from the newsmongers and professional informers who swarmed in London. There were more recusants now, declared Sir Francis Hastings, than at any time these seven years; let us look about us and see what is plainly apparent to every one with eyes. One hundred recusants were indicted at the last sessions, said the Recorder of London; English gentlemen were reduced to recusancy; masses at the ambassadors' houses were daily thronged with gentlemen and ladies. A petition was agreed upon at once; and was soon drafted, adopted, and despatched to the Lords, who, not less prompt, assented to it next day and saw it on its way to the King.[1]

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[1] We know of this speech only from the report of the committee to the House of Commons, in *Commons Journals*, May 5. Possibly the speech was delivered on May 3 or 4.

[2] Lansdowne MSS. 153, f. 71. (May 27, 1610, wrongly catalogued.) Stowe MSS. 171, f. 130, July 25, 1609. Foley, *Record*, I, 62. July 14, 1606.

[3] Possibly this is the one mentioned in *Hist. MSS. Commiss. Reports*. III, 12, dated May 24, 1610.

The result appeared in the shape of a proclamation issued June 2, 1610,[2] ordering all recusants to depart from London or any other place which was not their usual residence; and to remain, on and after June 30, within five miles of their homes, as was by law prescribed. The justices of the peace were strictly enjoined to disarm all Catholics; Jesuits and seminary priests were to quit the realm before July 4; and the oath of allegiance was to be tendered to all who were by law required to take it. These provisions were clear enough, but they were almost contradicted by the mild and conciliatory tone of the proclamation as a whole, which recognised that the laws had not been enforced because of the King's desire to press no loyal subject in matters of conscience;[3] and stated that even now it was not his intention to enforce them to the uttermost but merely to see that "greater care shall be used thereafter in the general administration of this oath." On June 14, appeared a commission directed to Bancroft and others for the banishing of Jesuits and seminary priests.[4]

It was the spirit rather than the letter of the proclamation which was obeyed. No secular priests or Jesuits of prominence left the realm; and the former proceeded, albeit somewhat less openly than usual, to collect signatures to their petition to the Pope, and the latter continued to foment the feeling against it during these very months—June, July, and August,—when the execution of the law was supposed to be most rigorous. Some of the less important men were no doubt banished, and others threatened; and the correspondence of the priests with one another[1] leaves little reason to doubt that the surveillance over them was stricter than for some years. They found it difficult to meet for their conferences, hard to communicate with each other, dangerous to be in possession of the ceremonial robes and altar accessories needed for the performance of mass; and necessary even to remain indoors part of the time. But, according to Mush, no general attempt was made to enforce the proclamation until the fall of 1610;[2] and this coincides with our knowledge of Bancroft's theory, that it was wise to give the Catholics several months to adjust themselves mentally to the conditions and to make up their minds thoroughly as to the attitude they would take. Nevertheless, in some parts of the country, the law was certainly executed at once and caused suffering in individual cases; and the search for recusants in London was probably thorough-going;[3] but the Catholic distress which we find so vividly depicted in many of the letters and reports proves. on close inspection, to be only quakings and apprehensions of what might happen if the law should be enforced.[4]

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[1] Possibly this is the paper in Additional MSS. 34218. f. 10 b. "For the safety of his Majesties person and the better observacon of the Lawes in force the comons thinke fitt to expound these things privately to be considered of." The provisions of the later proclamation were very similar to those of this document, except for the mild and clement tone.

[2] Printed in Tierney, IV, clxxxiv, and elsewhere.

[3] "We have ever been so loath to shed blood in any case that might have any relation to concience (though but of a deceived and disguised conscience) yet hath our said natural clemency ever witholden us from putting the law to that due execution against popish priests and recusants which their evil deserts . . . did justly deserve at our hands."

[4] Patent Roll, 8 Jac. I, part. 12.

The Archpriest and his friends had no doubts as to what the object of this new severity was and as to what its results would be. "This new oath is so pressed by the King," wrote Birkhead on July 2, 1610, "that it causeth many to stagger; yea, even such of the laity as much disliked it before; now they would take it with a limitation or protestation. . . . Outwardly, as yet, we (i. e. the seculars) are in good peace both with ourselves and our other friends (i. e. the Jesuits). I fear the diversity of opinions about this matter may breed some quarrel amongst us . . . A great number are already banished and many more like to be. Others not yet apprehended are driven to keep close."[5] During July a scheme was hatched and widely approved, of securing from the Pope a breve which should forbid all Catholics whatsoever, under the severest spiritual penalties. to do any of the things which the oath of allegiance required them to disavow.[6] This they hoped that the Government would accept as an earnest of Catholic loyalty; and that the Catholics themselves would consider as a definite permission from the Pope to take the oath. Although the scheme fell through, the Catholics in general took the oath, despite their spiritual confessors' objections; and in order to save their estates went further than even the seculars approved. "In this matter of the oath," wrote Birkhead in March, 1611, "all is like to run on wheels; every man inclined to take it in their own sense, when it is offered, rather than to hazard their estate. I write abroad, I exhort, I admonish, but all will not serve."[1]

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[1] Printed in Tierney, IV, and V.

[2] "About Michaelmas, 1610." Tierney, IV, clxxvii.

[3] Foley, *Records,* VII, Part II, 1019-1020. August 30, 1610.

[4] "In truth, writes Mush in August, 1611, "Catholics were never in like terror and frights as then and are now." Tierney, IV, clxxvii. See also *Venetian Calendar,* XI, nos. 821, 880, 918, 955; Foley, *Records,* VII, Part II, p. 1009-1011, 1015-1022.

[5] Tierney, IV, clxv. cf. clxiii.

[6] *Ibid.* IV, clxvii.

Meanwhile, the anti-Catholic sentiment continued its radical manifestations. During the month of June both Houses solemnly took the oath of allegiance. Stories of scandalous doings by the Catholics were related in the House by Sir William Bulstrode. Ladies supped at night with their father confessors in the Gatehouse jail; the pursuivants who captured a priest released him for a sum of money; the vestments and altar ornaments seized were sold instead of being destroyed and the money kept by the ecclesiastical officials.[2] Sir Francis Hastings roundly declared that the trouble lay in the connivance at recusancy by the officials who ought to enforce the law and in the corrupt practices of their subordinates. Then, Bulstrode came into relation with William Udall, a professional informer, who had been in Bancroft's service until he outlived his usefulness by selling information to both sides at once, and by insisting upon exorbitant remuneration. So incredible were his tales[3] that a committee of the House examined him, but failed to get anything out of him beyond a reiteration of his stories and wordy promises of his ability to prove all if it was only made worth his while. The fruit of this examining, orating, and discussing was contained in an Act (7 and 8 Jac. I. c. vi.) which repeated the provisions of the Act of 1606 regarding the oath of allegiance, and also enacted more stringent regulations in regard to married women recusants, especially those whose husbands were Protestants. If statutes, proclamations, and inflammatory speeches could have extinguished Roman Catholicism in England, there would not have been a single Catholic left upon the island in the year 1610. As it was, in that very year the secular priests and influential laity were busily and successfully laying the foundations of a permanent organisation of English Catholics.

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[1] Tierney, IV, clxv, note.

[2] There may have been more than a grain of truth in this. Birkhead wrote on May 3, 1611, of just such actions. But the fact that it was true in 1611 does not prove that it was in 1610. Tierney, IV, clviii.

[3] The original of one of his papers is in Lansdowne MSS. 153, f. 71, dated by Sir Julius Cæsar, May 27, 1610.

In the meantime, the bill against pluralities, which the Commons had sent to the Lords, had been progressing slowly, side by side with a proposition of Bancroft's for the augmentation of ecclesiastical incomes, which he intended to attach to the bill as a "rider," so that pluralities should be abolished only on condition that the incomes of single benefices should be made adequate. Now, toward the end of June, as the excitement over the Catholics began to subside a little, the Lords took the final steps in the preparation of this plan. A great committee, of which Bancroft was chairman, had been appointed on April 30, to discuss with the judges the bill on pluralities sent up by the Lower House. Circumstances had, however, hindered the progress of the work. First and foremost stood the rejection by the Commons of the King's final offer on the Great Contract, and the rapid progress the petition of grievances was making in the Lower House, whose acceptance by the King, it was beginning to be whispered about, was a necessary prelude to any substantial vote of money. James was financially so straightened that no doubt his resolution to support Bancroft's policy in ecclesiastical affairs was somewhat weakened. Bancroft therefore used some words, which the King let fall in conversation, as the occasion for a letter to him on the whole issue.[1]

The bill against pluralities, he said, was the same which had been rejected. Parliament after Parliament, for forty years. There was now indeed, he admitted frankly, "a fair overture of an earnest desire to make every parsonage and vicarage in England a competent living for a learned preacher;" and, if that could be truly achieved, the bill might very well be passed. He was afraid, however, that the laity would never be satisfied with the size of their own possessions; and would, furthermore, never cease to believe that the clergy were too wealthy. Indeed, he was convinced that the House of Commons contemplated only a redistribution of the incomes now received by the clergy: meant to add here only what was subtracted there; and would diminish the funds of the cathedrals and of the bishops by as much as they increased those of the parish clergy, so that the result would be "rather to deprive them all indeed of sufficient living than to make the lesser benefices able to maintain men so qualified, as now it is with such earnestness desired. But God's will be done; we that are bishops will do our best (as heretofore we have to our powers endeavored) for the increasing of a learned ministry; but we may never yield to any course that shall procure apparently their utter overthrow." While the bill forbade any clergyman to receive the tithes from two benefices, it allowed laymen to retain the incomes from any number of impropriations, "so as, for mine own part," declared the Archbishop, "I hold it a very unequal and scandalous project . . . considering to whom, by God's ordinance, tithes ought to be paid." He begged the King to stop the passage of any such bill. Much pressure would be put on him to consent to measures "against the clergy by the lower house of parliament, as hoping, now or never, to obtain that which divers of them for many years had aimed at, and that your Majesty, for the gaining of your own ends towards your supply and support, may be inclined to give more way unto them therein, than, I judge, may stand" with the welfare of the Church. The right and the wrong of the question, the law of the land, and the needs of the Church had already been stated to the Commons many times; "but all is one: reason or no reason, it forceth not; it is importunity and opportunity, that is relied upon; and we must again endure a new brunt to no purpose except your Majesty shall be pleased to prevent it: and I think it very necessary you should do so." This letter seems to have cured James of any intention he might have had of yielding to the Commons.

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[1] This remarkable letter is printed in Dalrymple's *Memorials and Letters*, I, 18-23, (Glasgow, 1766). No MSS. copy has as yet been found.

Then Bancroft fell ill and hindered the consideration of his project by the Lords for so long a time that, on June 8, the Bishop of London was desired to get the Archbishop's notes and plans so that the committee might be at work on them. On June 23, Bancroft himself reported, to the Lords, the committee's attempts to determine "How and by what Device or means every Benefice in England may be made fit and competent for a Learned minister." His remedy was to resume the payment in kind of all predial tithes, or tithes due from the owners of land; of all personal tithes,—one-tenth of the increase of flocks, herds, and the poultry yard;—and the reviving in full of all oblations and fees at marriages and burials, and of the customary presents at the great church festivals.[1] Commutations were to be abolished altogether. Then all land which had once paid and all land which had not paid but was now able to pay, should be titheable in kind. Many of the old abbey lands had been exempted from the regular tithes to the parson because they already paid them to the abbey; and the laity, who had come into possession of these lands at the Reformation, strenuously insisted that the exemption had passed to them with the land. Then, the enclosing of fields and the change from tillage into pasture had exempted many from tithes of grain, or great tithes, and had made them liable only to small tithes. If this was unjust to the parson, was it fair to the layman to demand the tenth part of a crop of grain he did not raise? Must he pay, not only the old tithe, but also another tenth of his flocks now pastured on those fields? That was a far more difficult point than the abbey lands, but the Archbishop's remedy was, as before, the payment of the old tithes; and was perhaps as fair as any other scheme could have been, for any change at all would produce injustice.

Then, all land which had been lately put under cultivation, the old common lands, waste land, the newly-drained fenland, and the like, should all pay tithes in kind. Small tithes, of hops, mead, and roots, of coal, brush-wood, branches trimmed from trees, of lime and brick kilns, of honey, wax, and fruit, and the rakings of the hay-field, were to be paid in kind and rigorously insisted upon. As if he had not asked enough, Bancroft next wished a subsidy for the purchase of impropriations in each bishopric to augment the smallest livings. All tithes now paid to any other person than the parson (of course outside of impropriations) were to be transferred to the true owner. Salisbury also produced a project[2] in many ways identical with Bancroft's, providing that all vicarages should be endowed with at least twenty acres of glebe land; and suggesting that the first fruits and tenths of the poorest clergy might be remitted by the King. A modern observer is inclined to think that, if Bancroft had asked for less, he might have secured something, but he realised fully the difficulties of the situation, and the temper of the men with whom he had to deal, and believed that a sweeping change stood quite as much chance of being accepted by the House of Commons as some less radical measure. He was probably right, for to increase the value of a part of the benefices would have taxed a part of the laity and not the rest, and would have aroused violent opposition: all must pay or no one would acquiesce at all. But no one acquiesced; and the House of Commons lost no time in rejecting the whole scheme. There were also conferences between the Lower House and the bishops upon ecclesiastical affairs, especially one on July 6, when Bancroft seems to have spent much time in answering complaints against the Canons, and denied that they needed the confirmation of Parliament.[1] But no definite result was attained.

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[1] S. P. Dom. Jac. I, 56, no. 57. "Some Proiects to better the liuings of ministers by the Archbishop of Canterbury." Another copy is Harleian MSS. 828. f. 30, endorsed "A proiect to better the Livinge of ministers, offered by the Bishop to the Lordes of the Higher House, 1610." The *Lords Journals* leave no room for doubt that Bancroft was the author. Printed in Collier's *Ecclesiastical History,* II, 697.

[2] This seems to be what is meant by a break in the MSS. headed "The L. S."

The session of 1610, and with it the first Parliament of James I, was drawing to a close when the great petition was delivered. In it, besides other grievances, was a summary of all the matters ecclesiastical complained of in the preceding sessions, each of which had had its bill or petition or committee and each of which had in turn contributed something to the total, which, growing by what it fed on, had attained in 1610 such portentous length that the original petition presented to the King was closely written on a sheet of parchment nearly four feet square.[2] James laughed heartily when he saw it and asked if they meant to present him with a table cloth. On July 23, the King read his answer,[3] reaffirming the episcopal position, on the ground that the Commons' demands were impossible of execution, but declaring that he and his clergy were ready to assent to any just or feasible project of reform. As to the silenced ministers, he said, no church in the world, Catholic or Reformed, allowed "such ministers to preach in it as have refused to subscribe to the Doctrine and Discipline settled in it and maintained by it." He promised, however, not to be harsh and to judge each case upon its merits. While he detested the "covetous and immoderate Heaping of many Benefices together,'' he could not take their benefices from the present incumbents any more than he could dispossess laymen of their freeholds, for by the common law a benefice ranked as a freehold. Furthermore, he did not think it practicable to limit ministers to one benefice, ''until some further Provision be made, that the Benefices of this Realm might be made competent Livings for Godly Ministers and Learned Preachers.''

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[1] S. P. Dom. Jac. I, 56, no. 9. There was much flat denial and contradiction by both parties.

[2] S. P. Dom. Jac. I, 56, no. 10. This seems to be the original parchment. July 7 (?) 1610, presented on July 8, 1610.

[3] Printed in *Lords Journals*, II, 658, dated July 23, 1610.

Some years previous, he continued, a bill had been drafted by the bishops and a canon passed by Convocation, ''wherein they shewed themselves very willing to forbear the Censure of Excommunication for Contumacy, where the original cause was of no great Weight and of private Interest, so as there might be a Law made whereby Contumacy in such Causes might otherwise be sufficienly (sic) punished.'' The House of Commons had rejected that bill, but whenever other adequate provision for such cases should be made by Parliament, both he and his clergy would be glad to give their assent to the abolition of excommunication. He promised to reform the High Commission by issuing no more diocesan commissions, and by making the quorum for business five instead of three. Then, recounting the history of the debates upon prohibitions, he desired both jurisdictions to keep their own limits; and added that he had strictly commanded the common law judges to grant their prohibitions in a right and lawful form, and only for a just and reasonable cause.

Thus, the King reaffirmed the archiepiscopal view of the situation: that the grievances complained of rose from the necessity of administering the Church with the enfeebled constitution left it by the Reformation. The clergy were ignorant, unable to preach, pluralists, and nonresident, because their incomes were insufficient; excommunication was used because there was no other penalty; the oath *ex officio* might be unjust to the prisoner, but it was an absolutely essential point of ecclesiastical procedure; the High Commission interfered in every department of ecclesiastical government, because the Church could be administered in no other way. The bishops were not in favour of the abuses, but when the alternative presented was the abolition of the only efficient administrative powers the institution possessed, the clergy could only reply with Bancroft, ''we may never yield to any course that shall procure apparently our utter overthrow,'' or fail to do our best to resist the breach ''which is sought to be made in the very form and frame of the church.''

The bill on pluralities had not been passed nor the grievances of the Commons admitted, but, in pursuance of an order from the King, Bancroft forwarded a long letter to the various bishops on the subject of pluralities which was in reality another of those ordinances by which the actual administration of the Church was carried on.[1] He called upon the bishops chiefly for information as to the number and location of the pluralists, their learning and capability; and also for similar statistics of recusants. The law which existed must be enforced; the canon law against the plurlists, the statute law and the oath of allegiance against the recusants; in which task the Archbishop offered the bishops all possible assistance from the High Commission and the Privy Council. ''We that are bishops,'' he said, ''have much to answer before God for our slackness hitherto in this point, the law therein being our warrant.'' ''I must likewise charge you,'' he continued, ''to examine very narrowly the proceedings of your chancellors, commissaries, archdeacons, and officials; for whilst we repose so much trust in them as we do, and they intend little (I mean especially chancellors, commissaries, and officials) but their own profit, many true complaints and mischiefs do indeed thereof ensue.''

He also had complaints to make about the expensive apparel worn by the richer clergy and their wives: ''Never was their pride in that respect so great as now it is, from the dean to every curate, nothing being left that way to distinguish a bishop from any of them: you shall find deans usually either in their velvet, damask or satin cassocks, with their silk netherstocks, nay, some archdeacons and inferior ministers having two benefices, are likewise for the most part so attired . . . which is one principal motive why there is such exclamation against double beneficed men. . . . By such their bravery in apparel they do procure no manner of credit unto themselves, but rather, upon my knowledge, great envy and heart burning against their calling and estates.''[2] It was, however, one thing to command and quite another to execute, and the main difficulty, with which Bancroft had to contend, was the inefficiency of the officials who must carry out his orders.

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[1] Cardwell, *Documentary Annals*, II, 154, 162, July 27, 1610.

[2] In 1578, Harrison in his description of England, contrasted the comely attire of the English clergy with the extravagance of the papists. *Elizabethan England*, Furnival's edition, 78, 79. In fact, what made Bancroft wroth was that the increase of substance which he had secured with great difficulty, the clergy proceeded straightway to spend for fine clothes instead of for education and books.

The last task to which Bancroft addressed himself was the final consolidation of the new Scotch episcopal administration. The General Assembly at St. Andrews in May, 1610, had finally established Episcopacy as an administrative institution; but the bishops were still unconsecrated, and were therefore still lacking in the most essential of all claims to the title. In considering the arrangements for the ceremony, the objection was raised that the candidates for consecration had not been ordained as priests under the Anglican ritual, but had merely been "called" by a Scotch presbytery, so that doubts were freely expressed as to the validity of their consecration as bishops, unless it were preceded by ordination as clergymen according to the Anglican forms. Bancroft produced authorities from the Church Fathers to sustain his opinion that no new ordination was needed; and added the real reason which his keen intuition had at once grasped, that "the Ordination given by the Presbyters must be esteemed lawful, otherwise that it might be doubted if there was any lawful vocation in most of the Reformed Churches."[1]

This difficulty disposed of, the Scotch bishops declared that they would not be consecrated by either archbishop, because that would renew the old claims of the predominance of the English Church over the Scottish Church. Bancroft yielded readily to their scruples, for he saw that this seed of possible discord must not be left between the King and the bishops as well as between the bishops and the presbyteries. The English Church must be a sister, not a mother, and the English archbishop must advise as a friend and not command or claim the right to command as a superior. So, on October 21, 1610, the Archbishop of Glasgow with two of his brethren was consecrated with elaborate ceremonies by the Bishops of London, Ely, Rochester, and Bath and Wells, at the Chapel of the Bishop of London near St. Paul's Cathedral.[2]

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[1] Spotiswood, *History of the Church of Scotland*, 514 (Edition of 1666). His authority is excellent, for he was one of those consecrated. Heylin repeats this entry with some changes, but without acknowledgment; he copied many other things from the ame source. *Aerius Redivivus*, 382.

[2] Spotiswood, and also Melvill's *Diary*, 803. The royal order is in Rymer, *Foedera*. XVI, 706, October 15, 1610.

Impressive and significant as the service was meant to be, Bancroft's good sense made it a private and not a public rite. The mere fact of the consecration was sure to arouse enough bitterness in Scotland, but the ministers would have been doubly incensed if the humiliation and dishonour of the Kirk (as they termed it), had been made a spectacle for the London crowd, parading daily in the nave at St. Paul's.

It was the last public act of Richard Bancroft. He had been ill all summer, his absences from Parliament being excused by the Chancellor day after day on the score of his health. The confinement as a student in his early years, his residence in the marshes of Ely and of Ireland, coupled to the fogs and dampness of Fulham and Lambeth had sown and nourished ague and stone, diseases common at that day but severe and excessively painful. All the last week of October he suffered agonies, and died at last on November 2, 1610.[1] "It is remarkable," wrote Melvill at the conclusion of his Diary,[2] "how soon thereafter the great Judge of this world called the two chief instruments of the overthrow of Discipline of the Kirk of Scotland to their account and judgment: for Richard Bancroft, Archbishop of Canterbury, who, at the funeral sermon made by Abbott, Bishop of London, had the commendation of the overthrowing of the Presbyteries of the Kirk of Scotland, was himself fearfully overthrown by fearful and terrible torments and desperate death at Lambeth in that same month of November, at the verie tyme of the Scottish bishops' inauguration: and in the month of February thereafter immediately following, the Earl of Dunbar was by death plucked from the height of his honour and credit at court. . . . And thus was Jericho built up again in Scotland, as also the curse executed upon the builders."

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[1] The date is settled by the inscription on his tombstone, which with others of that type, has lately been removed from its place in Lambeth Chancel, and a tablet inserted in the wall, bearing all the names of those buried there. In some books, the date is given as November 12, which of course is merely New Style; November 2 being the Old Style.

[2] Row copies this statement in some places nearly verbatim.

CHAPTER XII

THE RESULTS OF RECONSTRUCTION

The death of Bancroft marks the close of the period of reconstruction. Save for the fulfilment of the plans for the reconstruction of the High Commission by the issuance of the Letters Patent of 1611, Abbot, the new Archbishop, busied himself but little with the administration of the Church. He preferred theological controversy to hearing law suits, appearing to have been content to continue his predecessor's policy, and to carry on the actual administrative work by his predecessor's agents. His long primacy from 1610 to 1633 was, in reality, a continuation of Bancroft's. If there was, on the whole, no retrogression, there was certainly little progress.

In fact the death of the leader seems to be the only adequate explanation of the cessation of effort in 1610, for much remained to be done. The greatest issues had not been settled nor the worst difficulties obviated. The situation had been modified, not remedied. The clergy was still ignorant, nonresident, and pluralist; their incomes were, in general, as inadequate as before; the coercive power of the High Commission and of the ecclesiastical courts had been diminished rather than increased. Moreover, the enemies of the Establishment were still active: for the Puritans, although cowed, were neither demoralised nor disorganised; the Catholics seemed loyal, but were still controlled by the Jesuits; and their priests formed ostensibly a missionary organisation for the conversion of England.

On the other hand, very much had certainly been accomplished. The administration of the Church had become possible, the life of the clergy tolerable. The union of small benefices, situated either in the same town or village or within a mile or two, had gone on rapidly; the exchange of benefices by pluralists had been effected in many cases, and enabled a man practically to reside on both at the same time; often the personal intervention of the bishop or archbishop, had secured a compromise between the parson and his people, by the terms of which part of the old tithes were again paid in kind. Suits were brought in great numbers, and many decisions were rendered on cases where the *modus decimandi* was in doubt. In 1609, the poorer clergy were relieved from the payment of taxes on their glebe land,[1] and, as their tithes were already exempt, and most of them paid no first fruits, they were at last able to devote their small stipend to their own needs. Bancroft had also established the rule that, whatever a man's necessities, he should not relieve them without the knowledge of the higher authorities. If he wished to hold two benefices, he must have a dispensation; if he wished to be nonresident altogether on one or the other, he must secure permission; and he must not preach without license.

Bancroft had also laid great stress on the necessity of leaving to succeeding generations as complete a record as possible of the state of the Church. The episcopal registries were overhauled and arranged; the parish records sorted, patched up, and put away. Then were written down and filed terriers of the amount of glebe land; sworn statements of the amount of tithes paid by each bit of land, or of the *modus decimandi* of the parish as a whole; with the facts concerning leases, agreements, the condition of the timber, water rights, and the like. The cathedrals and the colleges were strictly investigated.

The proportion of learned men and of preachers among the clergy had certainly been increased. The Visitation Records contain many entries stating that some man hitherto unable to preach had now become qualified and had secured his license. Those who could not preach read homilies. It was becoming difficult for a man without at least a bachelor's degree to secure induction. In the diocese of Norwich, three-quarters of all the men instituted between January, 1603, and January, 1608, possessed degrees. Of these, eighty-four were Masters of Arts; nineteen were Bachelors of Arts; twelve were Bachelors of Divinity, while seven possessed higher degrees. Of the remaining fourth, most of them had studied for a time at one of the universities.

A good deal of attention had been paid to the proper chanting of the ritual, and to the music performed in the cathedrals. Caps and surplices had been more generally worn than in the previous half century, and with less objection. The fasts and festivals were better observed. On the whole, during the years, 1604-1610, the repairing and beautifying of the churches had progressed rapidly throughout the East and South, and to some extent in the West and North, while in London many new edifices had been erected. The glass broken by the zealots of Edward VI's and Elizabeth's time was in a measure replaced, and some fine stained glass was put in. A great effort was made at Lambeth to place in every parish a copy of the Prayer Book, Bible, and Canons, and of Jewel's works; and to see that the royal printer provided cheap copies for sale.

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[1] Petyt MSS. 538. 38, f. 319.

In other directions, the results of reconstruction had been none the less considerable. The outward form of the Church—its Canons, its liturgy, its statement of faith in the Thirty-Nine Articles—was so complete that it has not yet received serious alteration. The administrative constitution, as revived by Bancroft, also lasted until the nineteenth century. By 1610, the High Commission had attained its final form, and had amply demonstrated its usefulness. For the time being, too, the battle with the common law, though technically lost, had been practically won, and, in the main, the outlines of the agreement between Coke and Bancroft were followed in later decisions; the few alterations in it have been in Bancroft's favour. The period of reconstruction, then, saw the completion of the institutional form of the English Church.

The struggles of those thirty years had, moreover, trained a corps of skilled administrators who guided the official policy of the Establishment long after Bancroft was dead. They continued his administrative traditions, followed his precepts, and in the main were responsible for such progress as was made in the next quarter of a century. Sir John Lambe, Sir Charles Cæsar, Sir John Bennett, became the backbone of Abbot's administration, and practically controlled the High Commission and the ecclesiastical courts. But far more important than this had been the awakening in the clergy as a whole of a new spirit of corporate life and of a realisation of the necessity for interdependence. Where under Elizabeth every clergyman, from the bishop down to the meanest curate, had been scheming and contriving to keep his own post, regarding only his individual comfort, each clergyman had now come to realise the beauty of the Church as an institution, the sanctity of its buildings, the mysticism of its service, the nobility of its mission. For the first time since the breach with Rome, the Church as an institution became admirable in the eyes of its clergy as a whole. The ecstatic mysticism of George Herbert was a logical consequence of the teachings of Richard Bancroft, the full expression of one of the greatest results of the period of reconstruction. The Church, which the grandfathers had scorned, which the fathers had tolerated, became an object of enthusiastic loyalty to the sons.

No less a change had taken place in the attitude of the nation. In 1583, there had been three comparatively small bodies of ardent, enthusiastic men—the Churchmen, the Puritans, and the Catholics —all seeking to win the allegiance of the great mass of the people, who, indifferent, apathetic, and bewildered by the variety of possible views, embraced none with fervor. By tradition and habit the majority still inclined in 1583 to the old mass; but their growing loyalty to Elizabeth, their hostility to Spain, and the pressure of the penal laws, induced them to give a more or less passive allegiance to the Establishment. Such a condition of affairs could not continue long. If the majority were at heart Catholic, the national Church would be transformed to express their beliefs; if, on the other hand, Presbyterianism had struck the dominant note in the hearts of Englishmen. the Church would inevitably have been Puritan as soon as its members became conscious of their real beliefs. Only that settlement would endure which should be clear, undeniably legal, and above all, in harmony with the traditions and aspirations of the majority. Such an institution was the Church as reconstructed by Bancroft and to it the great majority of the people gave their sincere allegiance. Later events proved its sincerity. The outbreak of the Civil War was conclusive evidence that Englishmen were not ready to support Catholicism or Arminianism. The fall of the Commonwealth demonstrated conclusively that England was not Puritan. The Restoration restored neither the old monarchy nor the old Parliament, neither the old courts nor the old law, but the Church as Bancroft left it.

Nor was the constituency of the Church by any means narrow and exclusive. Bancroft's settlement erected no barriers and founded no new distinctions. Based upon a union of the moderates of all parties, Puritan, Catholic, and Episcopalian, it tolerated all but the most extreme. The Archbishop had seen that, in view of the necessary existence of a strong minority with whom hostility to the Church was the very basis of its creed, no hard and fast test of ecclesiastical loyalty could be successful. The most that could be hoped for would be the tacit acceptance of the legal position of the Church as the established religion of the realm. Those who would stay in the Church if not too closely pressed, must be kept in, whether Puritan or Catholic; those who would not come in, but who asked only to be allowed to worship quietly and unobtrusively according to their own ritual, should be tolerated by State and Church alike; but those who would neither come in nor remain peaceably without, should be chastened with the rod and driven from the land. Although for many decades the State denied Dissenters and Catholics legal recognition of any sort, in practice it admitted tacitly from this time on the existence of these alien views and the right of their adherents to worship quietly. It demanded from both in return unswerving temporal loyalty, unfeigned public recognition of the legality of the Established Church, and respectful conduct toward its officers, adherents, and services. During the period of reconstruction, then, was created and established that policy of tolerating illegal worship which has existed to the present moment and which is so characteristically English. What it meant was, that Bancroft obtained the adhesion to the Church, not only of the mass of the nation who saw and believed, but of the past enemies of the Church, those who saw, but, unbelieving, acquiesced. His greatest triumph was that, from that moment, the whole English nation has recognised the legality of the Establishment.[1]

The reaction against the Book of Discipline and dogmatic Calvinism, together with the friendliness to the Catholics and the endeavour to draw as many of them as possible into the Establishment, laid the foundations of that theological movement known as Arminianism, whose first clear traces are found in 1607 and 1608, but whose full fruition was not realised for nearly fifteen years. Among the great mass of the people now brought to acquiesce in the existence of the Church, and to take on the whole a sort of pride in it, there were many who were strongly drawn by the old traditions toward Catholic ritual and doctrines; and, as their comprehension of what dogmatic Calvinism involved became clearer, so the expression of their dissent became more decided. Then, the pressure of the penal laws upon the laity had caused many to enter the Church, who, forced by circumstances to renounce the papal supremacy, were unable to renounce Catholic ritual and dogma. Probably after the defeat of the Armada in 1588, many gave their adhesion. The quarrels of the Jesuits and seculars and the accession of James I had resulted in further gains; but the Gunpowder Plot was responsible for the defection of the largest number. Thus it was that in 1608 the presence in the Church of these quasi-Catholics (if they might be so called) had produced a perceptible influence on its theological beliefs. Inasmuch as the Catholic had already renounced the Pope by actually taking the oath of allegiance or by receiving the Anglican communion, why should he not free himself from the weight of the penal laws and secure his family from alarms and surveillance by joining the State Church altogether? And if he found there observed very nearly those liturgical forms which he valued so highly, there was even less reason to hesitate. To make his adhesion as easy as possible and the wrench from his old associations as slight as possible was clearly the best way to ensure the stability of the new compromise. How little of his previous ideas a Catholic must renounce to feel at home in the English Church now became the vital question of ecclesiastical policy.

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[1] From the point of view of ecclesiastical history, the period of the Civil War and Commonwealth is an episode—a temporary experiment.

The movement gained its real currency with the clergy and laity because it was the natural expression of a tendency which had already shown great strength on the Continent. Arminianism was the English equivalent of the Catholic Counter-reformation. As the dogmatic Reformation itself had come late in England so the Counter-reformation came years after the first appearance of similar impulses in Europe; and while in Europe it took the form of the reinstallation of Catholicism, in England the strength of political Protestantism precluded its achieving more than the emphasising of those resemblances to Catholic ritual and dogma which Elizabeth had so carefully preserved. Where the Elizabethan prelates had been wont to lay stress upon the Calvinistic side of the Elizabethan settlement, it was now those affinities to Catholic practices and beliefs which received attention. In the succeeding period of English ecclesiastical history, then, the controversial issues are more often dogmatic and ritualistic than administrative; and its general tone is not unlike that of the last quarter of the sixteenth century in Europe. Here was begun that alliance of Catholic and Episcopalian in support of the Establishment which was so conspicuous a factor of the Civil War.

Great and significant as these results were, the remodelled Church was neither uniform in law nor consistent in practice; nor was it as precise and logical in the statement of its new position as might have been desired. Being essentially English, it lacked that theoretical perfection, that symmetry of outline, that logical arrangement which modern thinkers admire. Like all English constitutional settlements which have endured, it was a collection of makeshifts for obviating certain very practical difficulties. The Puritans complained loudly at the time that the bishops temporised and refused to ''lay the axe to the root of the tree.'' In a sense, the charge was true. But they did not because they could not. The greatest difficulties of all—the lack of sufficient maintenance for the clergy, the lack of coercive force in the ordinary administrative fabric—had not been remedied because they could not be. They had been the result of the natural causes operating during a period of transition. Like the Reformation of Henry VIII and Elizabeth, Reconstruction was a stage in the growth of the religious consciousness of the English people and of its institutional expression. It was caused in reality by the working of deep-lying natural forces which were quite beyond human control. The worst difficulties resulted from agricultural and financial changes which affected all Europe, and which could be remedied only by those same economic forces which had given them birth. Thus, the amelioration of ecclesiastical incomes, and the consequent improvement in the character and learning of the clergy, was really effected by the subsequent economic development of England. The ecclesiastical property, which had been insufficient in 1603, was in 1832 enormously valuable, but the increase in value had not been voted by Parliament. It came from the growth of cities where villages had been; from the rise of factories among the gorse and heather on the hillsides; from improved methods of agriculture and grazing; from the growth of a merchant marine and the expansion of foreign trade. From all these varied causes had resulted an enormous change in the conditions of material life in England of which the clergy reaped the benefit. The ecclesiastical commissions have redistributed the property and have equalised conditions, but economic changes have been the sole solution of the economic difficulties which confronted the Church in 1603.

The other great difficulty in 1603, the lack of coercive force, was remedied, curiously enough, by doing away with the necessity for it. The High Commission was not "restored" in 1660, because the recognition of the legality of the Establishment by the vast majority of the nation made coercion less necessary, and made the Commission chiefly a high court for ecclesiastical appeals. It was, therefore, not performing, in 1640, anything which the ordinary hierarchy could not do, and the temporal courts still declared its authority to fine and imprison illegal. In 1660, then, the ordinary ecclesiastical administration stood alone. Gradually, the State encroached more and more upon the powers of Convocation and of the bishops; the common law courts successfully filched away the old ecclesiastical jurisdiction; the authority over the laity for the correction of moral offenses became more and more unpopular, and an opinion began to be circulated that the Canons of 1604, not having been confirmed by Parliament, did not bind the laity. Thus, the field of ecclesiastical administration was gradually narrowed to the supervision of the clergy and the punishment of ecclesiastics for spiritual offences by purely spiritual penalties. Once more the powers of the Church became adequate for the performance of its functions, because those functions which it had not performed well, had been shorn off. Paradoxically stated, the ecclesiastical administration, weakened by the loss of its old jurisdiction, was stronger and more adequate than before.

APPENDICES

I

CONSTITUTIONAL PRECEDENTS

THE PRECEDENT FOR THE CANONS OF 1604

Canon I

Bonner's Injunctions, 1542, i.
Queen's Injunctions, 1559, i. (nearly verbatim.)
Form of Subscription for all ministers, 1559.
Thirty-Nine Articles, Article XXXVII.
Addition to the Articles for Acknowledgement of the Laws Ecclesiastical, *Historical Manuscripts' Commission Report, Hatfield House,* IV, 94-95. (February 1590-1.) Another copy in Petyt MSS. 538.38, f. 170. Imperfectly printed in Strype *Whitgift,* II, 59-60.
Letter of the imprisoned Puritan ministers to the Queen. April. 1592. Strype, *Annals,* IV, 120.

Canon II

I Elizabeth c. l.
Thirty-Nine Articles, Article XXXVII.
Addition to the Articles for Acknowledgement of the Laws Ecclesiastical, 1590-1.
Letter of the imprisoned Puritan ministers to the Queen, 1592.

Canon III

Visitation Articles for Rochester and Canterbury, 1589, vii .(Strype, *Whitgift,* I, 593.)
Addition to the Articles for Acknowledgement of the Laws Ecclesiastical, 1590-1.
Letter of the imprisoned Puritan ministers to the Queen, 1592.
"A Godly Treatise," (Strype, *Annals,* III, part ii, 152.)

Canon IV

Form of Subscription for all ministers, 1559.

A proclamation against the despisers or breakers of the orders prescribed in the Book of Common Prayer. Cardwell, *Annals,* I. 383. Cf. id., 240, 263.

13 Elizabeth c. 12, sect. 2.

Rule of the Ward Court of London, Stow, *Survey of London,* Book V, p. 320. (ed. 1720.)

Addition to the Articles for Acknowledgement of the Laws Ecclesiastical, 1590-1.

Articles proposed by Whitgift to the imprisoned Puritans, January, 1591-2. Strype, *Whitgift,* II, 85.

Canon V

Canons of 1571, art. i, sect. 3, end; art. vi, sect. 2.

13 Elizabeth c. 12.

Visitation Articles of 1576, xxi.

Declaration prefixed to the new edition of the Thirty-Nine Articles, 1604.

Canon VI

Canons of 1571, art. vi, sect. 2.

Addition to the Articles for acknowledgement of the Laws Ecclesiastical, 1590-1.

Canon VII

Addition to the Articles for Acknowledgement of the Laws Ecclesiastical, 1590-1.

Articles proposed by Whitgift to the imprisoned Puritans, 1591-2.

Means how to settle a Godly and Charitable Quietness in the Church, Strype, *Whitgift,* I, 387; II, 135.

Canon VIII

8 Elizabeth c. 1.

Canons of 1571, art. vi, sect. 2.

Canon IX

Thirty-Nine Articles, Article XXXIV.

Addition to the Articles for Acknowledgement of the Laws Ecclesiastical, 1590-1.

Letter of the imprisoned Puritan ministers to the Queen, April 1592.

Canon X

There is no direct precedent, but see "The Unlawful Practice of Prelates against Godly Ministers." Strype, *Annals*, III, part i, 291. Compare Council of Antioch, 340, c. ii. V; Council of Chalcedon, c. xviii; Council of Gangra, 324, c. v, vi.

Canon XI

Addition to the Articles for Acknowledgement of the Laws Ecclesiastical, 1590-1.

Canon XII

Articles proposed by Whitgift to the imprisoned Puritans, 1591-2.

Of Divine Service and the Administration of the Sacraments

Canon XIII

Injunctions of Edward VI, 1547, xxiv.

Queen's Injunctions, 1559, xx. (verbatim, except for the omission of one clause.)

Canon XIV

A Proclamation against the despisers or breakers of the orders prescribed in the Book of Common Prayer, 1573.

Visitation Articles, 1576, i.

Canon XV

Articles of 1549, vii.

Queen's Injunctions, 1559, xlviii. (extensive additions.)

Canon XVI

Parker's Visitation Articles for Cathedral and Collegiate Churches, 1567, iii.

Canon XVII

New.

Canon XVIII

Articles of 1549, iii, iv.
Queen's Injunctions, 1559, xxxviii, (verbatim, with some additions,) lii, xxxix, xvii.

Canon XIX

Canons of 1571, v. (in substance and style only.)

Canon XX

New.

Canon XXI

Visitation Articles of 1576, lii.

Canon XXII

New.

Canon XXIII

Advertisements of 1564, x. (additions.)

Canon XXIV

Advertisements of 1564, xi. (additions.)

Canon XXV

Advertisements of 1564, xii. (additions.)
Canons of 1571, art. ii, sect. 4. (altered.)

Canon XXVI

Bonner's Injunctions of 1542, ix.
Injunctions of Edward VI, 1547, xxv.
Queen's Injunctions, 1559, xxi. (first few lines verbatim.)

Canon XXVII

Advertisements of 1564, xv. (in part only.)

Canon XXVIII

Queen's Injunctions, 1559, xxxiii. (in substance only.)
Canons of 1571, v. (verbatim, although in the Latin form of 1604 appear considerable changes in wording.)

Canon XXIX

Advertisements of 1564, xvi, xvii. (in substance only.)

Canon XXX

New.

Ministers—Their Ordination, Function, and Charge

Canon XXXI

New.

Possibly, Bacon's *Considerations touching the Pacification of the Church,* 1603, is precedent for the idea.

Canon XXXII

New.

Canon XXXIII

Articles of 1575. vi.
Articles of 1583, vii. (additions in 1604.)
Canons of 1585, i.
Canons of 1597, i. (repetition verbatim of Canon i of 1585.)

Canon XXXIV

Lyndwood, Provinciale, lib. I, tit. 5, 6, 9.
Advertisements of 1564, xxii. (one clause only.)
13 Elizabeth c. 12.
Canon of 1571, art. i, sect. 6. (real beginning of this canonical provision, requiring him to produce letters dimissory, to know Latin, and to bring testimonals from some who knew him.)
Articles of 1575, i. (first appearance of the requirement that he be 23 or 24 years old at the least, subscribe to the Articles of 1562, and give an account of his faith in Latin.)
Articles of 1583, viii. (substance only.)
Canons of 1585, i. (Latin version practically verbatim.)
Orders of 1593, i.
Orders of the Bishop of London. 1595, ii. (Wilkins, *Concilia,* IV, 348.)

Canons of 1597, i.

The Archbishop of Canterbury's letters with Articles touching the ecclesiastical courts, 1601, vi, (Wilkins, *Concilia,* IV, 366.)

Canon XXXV

Canons of 1585, i. (the penalty begins here.)

Orders of 1593, i.

Canons of 1597, i.

Bacon's *Considerations touching the Pacification of the Church.*

Canon XXXVI

Articles of 1583, vi. (practically verbatim.)

(The history of this Canon has been fully treated in Book II, Chapter IV, and its precedent has been quoted in full in chronological order in the Appendix following.)

Canons XXXVII, XXXVIII, XXXIX

New.

Canon XL

Injunctions of Edward VI, 1547, xxxi.

Queen's Injunctions, 1559, xxvi. (much expanded.)

Canon XLI

Bonner's Injunctions, 1542, iv.

Canons of 1571, viii.

Canons of 1585, v. (The English version of 1604 is almost a translation of this Latin version of 1585, but the Latin version of 1604 is worded differently.)

Orders agreed upon by the archbishopps and byshopps, etc., at the parliament 1588 and commanded by her Majestie exactlie and diligentlie to be observed and put in execution. Cardwell's *Annals,* II, 36.

Canons of 1597, ii.

Canon XLII

Queen's Injunctions, 1559, i. (merely states that the deans are to see the law observed.)

Canons of 1571, art. ii, sect. 5. (precisely the same in sense but different in wording.)
Articles agreed upon by the archbishopps and byshopps, 1588.

Canon XLIII

Visitation Articles of 1576, iv.

Canon XLIV

Visitation Articles of 1576, v.

Canon XLV

Injunctions of Thomas Cromwell, 1538, vi.
Bonner's Injunctions, 1542, xviii. (slight.)
Injunctions of Edward VI, 1547, ii.
Queen's Injunctions, 1559, iii.
Orders of 1586, vi.

Canon XLVI

Advertisements of 1564, vii.
Articles of 1575, x.
Orders of 1586, vii. (greatly changed.)

Canon XLVII

Canons of 1597, iv. (changed slightly.)

Canon XLVIII

Canons of 1571, art. v, sect. 9. (additions and omissions.)
Orders of Convocation, 1601, v. (Wilkins, *Concilia,* IV, 363.)

Canon XLIX

Advertisements of 1564, ix. (repeated in part verbatim.)
Canons of 1571, art. vi, sect. 1. (slight similarity only.)

Canon L

Injunctions of Thomas Cromwell, 1538, ix.
Injunctions of Edward VI, 1547, x.
Queen's Injunctions, 1559, viii.

Canon LI

Bonner's Injunctions, 1542, viii, xix. (slight resemblance only.)
Canons of 1571, art. ii, sect. 6. (substance only.)

Canon LII

Canons of 1571, art. v, sect. x. (substance identical, but the language in the Latin form is different.)

Canons LIII and LIV

New.

Canon LV

Queen's Injunctions, 1559, end. (word for word with a few additions.)

Canon LVI

The Privy Council's Letter to the Archbishop of Canterbury, January 17, 1579, (Wilkins, *Concilia,* IV, 292.)
Also the recommendations of the Archbishop of York in 1597, favoring a much more extreme Canon. *Historical Manuscripts, Commission Report, Hatfield House,* VII, 452.

Canon LVII

Articles of 1549, xiii.

Canon LVIII

New.

Canon LIX

Bonner's Injunctions, 1542, xi.
Articles of 1549, viii.
Queen's Injunctions, 1559, xliv. (verbatim with a short additional passage, "and all fathers and mothers.")
Articles of 1575, x. (merely a command to catechise.)
Orders of 1586, iv. (sense only.)

Canons LX and LXI

New.

Canon LXII

Orders of 1593, ii.
Canons of 1597, v.

Canon LXIII

New.

Canon LXIV

Queen's Injunctions, 1559, end. (much expanded.)

Canon LXV

Canons of 1597, viii.

Canon LXVI

New.

Canon LXVII

Advertisements of 1564, xix. (identical in substance.)

Canons LXVIII and LXIX

New.

Canon LXX

Injunctions of Thomas Cromwell, 1538, xii.
Injunctions of Edward VI, 1547, xiii, xxx. (?)
Injunctions of 1559, x. (the same except for the addition of a final clause.)

Canons LXXI and LXXII

New.

Canon LXXIII

Visitation Articles of 1569, xviii.
A proclamation against the despisers or breakers of the orders prescribed in the Book of Common Prayer, 1573.
Visitation Articles of 1576, xxiii.

Canon LXXIV

Bonner's Injunctions, 1542, xii. (resemblance slight.)

Queen's Injunctions, xxx. (from this came the preface of this Canon.)
Advertisements of 1564, xxix-xxxvi. (from these came most of its substance.)
Canons of 1571, art. vi, sect. 3
Articles of 1583, iv.

Canon LXXV

Injunctions of Thomas Cromwell, 1536, viii.
Bonner's Injunctions, 1542, xv.
Injunctions of Edward VI, 1547, viii.
Queen's Injunctions, 1559, vii. (repeated verbatim, with a few additions.)

Canon LXXVI

New.

Schoolmasters

Canon LXXVII

Queen's Injunctions, 1559, xl. (nearly verbatim.)
Canons of 1571, art. ix, sect.1. (Latin version of 1604 is the same, except for additions.)

Canon LXXVIII

New.

Canon LXXIX

Bonner's Injunctions, 1542, vii.
Injunctions of Edward VI, 1547, xxxiv.
Queen's Injunctions of 1559, xxxix.
Canons of 1571, art. ix, sect. 2. (differs somewhat in detail.)

Things Appertaining to Churches

Canon LXXX

Injunctions of Thomas Cromwell, 1536, vii.
Injunctions of Thomas Cromwell, 1538, ii, iii.

Bonner's Injunctions, 1542, iii.
Injunctions of Edward VI, 1547, vii.
Queen's Injunctions, 1559, vi.
Canons of 1571, art. v, sect. 3. (exactly the same.)
See also, Canons of 1571, art. 1, sect. 8; art. 2, sect. 1.

Canon LXXXI

Canons of 1571, art. v, sect. 3.

Canon LXXXII

Queen's Injunctions, 1559, "Tables in the Church," latter part.
Advertisements of 1564, xiii, xiv. (contain what did not come from the Injunctions.)

Canon LXXXIII

Injunctions of Edward VI, 1547, xxviii.
Queen's Injunctions, 1559, xxiv. (altered.)

Canon LXXXIV

Injunctions of Edward VI, 1547, xxix.
Queen's Injunctions, 1559, xxv. (some omissions.)

Canon LXXXV

Canons of 1571, art. v, sect. 2. (substance only.)

Canon LXXXVI

New.

Canon LXXXVII

Canons of 1571, art. x, sect. 3. (nearly exact.)

Canon LXXXVIII

Canons of 1571, art. v, sect. 7. (not exactly the same in details and wholly dissimilar in language.)

Churchwardens or Questmen, and Sidesmen or Assistants

Canon LXXXIX

Canons or 1571, art. v. sect. 1. (nearly the same; some additions.)

Canon XC

Injunctions of Edward VI, 1547, xxiv. (?)
Queen's Injunctions, 1559, xlvi. (additions, but otherwise the same.)
Proclamation of the Queen, "for the reverent use of all Churches and churchyards." Cardwell, *Annals,* I, 310. (1561.)
Canons of 1571, art. v, sects. 2 and 8.

Canon XCI

New.

Ecclesiastical Courts Belonging to the Archbishop's Jurisdiction

Canon XCII

Canons of 1571, iv.

Canon XCIII

New.

Canon XCIV

Whitgift's Statutes for the Ecclesiastical Courts, 1587, art. i, sect. 1.

Canon XCV

Articles of 1583, ix.
Canons of 1585, i, sect. 5.

Canon XCVI

Whitgift's Statutes for the Ecclesiastical Courts, 1587, art. i, sect. 3.

Canon XCVII

Whitgift's Statutes for the Ecclesiastical Courts, 1587, art. i, sect. 2.

Canon XCVIII

New.

Canon XCIX

Advertisements of 1564, xxviii.
Canons of 1571, art. x. sects. 5 and 6. (resemblance slight.)

Canon C

Bonner's Injunctions, 1542, v.
Orders of 1593, iii.
Canons of 1597, art. v, sect. 3.

Canon CI

Bonner's Injunctions, 1542, v, vi.
Orders of Convocation, 1601, vi.
The Archbishop of Canterbury's Letter touching Ecclesiastical Courts, 1601, viii.
See also Canon LXII of 1604.

Canon CII

Articles of 1585, iii.
Canons of 1597, v.

Canons CIII and CIV

New.

Canon CV

Canons of 1597, vi. (Except for the change of a few words this is exactly the same as the Latin version of 1604. The last part is new.)

Canon CVI

Whitgift's Statutes for the Ecclesiastical Courts, 1587, art. v, sect. 2.
Canons of 1597, vi. (exactly the same in the Latin version.)

Canon CVII

Canons of 1597, vi.

Canon CVIII

Canons of 1597, vi.

Ecclesiastical Courts Belonging to the Jurisdiction of Bishops and Archdeacons and the Proceedings in Them

Canon CIX

New.

Canon CX

Injunctions of Thomas Cromwell, 1538, xi.
Injunctions of Edward VI, 1547, xii.
Queen's Injunctions, 1559, ix. (somewhat altered.)

Canon CXI

Really does no more than order the observance by the wardens of Canon XVIII.

Canon CXII

Simply orders the wardens to observe Canon XXI

Canon CXIII

New.

Canon CXIV

Orders of the Bishop of London, 1595, xii.

Canon CXV

New.

Canon CXVI

Orders of the Bishop of London, 1595, v.
The Archbishop of Canterbury's Letter with Articles touching the Ecclesiastical Courts, 1601, ii.

Canon CXVII

The Archbishop's letter to the Bishops, May 22, 1601. (Wilkins, *Concilia,* IV, 364.)
Orders of Convocation, 1601, iv.

Canons CXVIII, CXIX, CXX

New.

Canon CXXI

Orders of Convocation, 1601, iii.

The Archbishop of Canterbury's Letter with Articles touching the Ecclesiastical Courts, 1601, iii.

Canon CXXII

Puts into effect what was decided upon at the Hampton Court Conference.

Canon CXXIII

Orders of the Bishop of London, 1595, viii.

Canon CXXIV

Orders of the Bishop of London, 1595, iii.

Canons CXXV, CXXVI

New.

Judges Ecclesiastical and their Surrogates

Canon CXXVII

New.

Canon CXXVIII

Orders of the Bishop of London, 1595, vii. (in part only.)

Proctors

Canon CXXIX

Whitgift's Statutes for the Ecclesiastical Courts, 1587, art. iv, sect. 1. (substance exact.)

Canon CXXX

Whitgift's Statutes for the Ecclesiastical Courts, 1587, art. iv, sect. 2. (substance exact.)

Canons CXXXI, CXXXII

New.

Canon CXXXIII

Whitgift's Statutes for the Ecclesiastical Courts, 1587, art. iv, sect. 7.

Registrars

Canon CXXXIV

Parker's Statutes for the Court of Arches, 1573, First Series, art. v; Second Series, art. iv.
Whitgift's Statutes, 1587, art. ii; art. iv, sect. 6.
Orders of the Bishop of London, 1595, vi.

Canon CXXXV

New.

Canon CXXXVI

Orders of 1593, vii.

Canon CXXXVII

New.

Apparitors

Canon CXXXVIII

Orders of the Bishop of London, 1595, xvii, xviii.
The Archbishop of Canterbury's Letter with Articles touching the Ecclesiastical Courts, 1601, v.

Authority of Synods

Canons CXXXIX, CXL, CXLI

New.

CONSTITUTIONAL PRECEDENTS

PRECEDENTS FOR VISITATION ARTICLES

I. Parker's Visitation Articles for Diocese of Canterbury
1569

Article

1 No precedent.

2 Queen's Injunctions, 1559, 6, 24, 25, 55.

3 and 4 None.

5 Injunctions, 1559, 55, Advertisements, 1564, and the Prayer Book.

6 Dubious Precedent in Visitation Articles, 1559.

7 Advertisements, 1564. Injunctions, 1559, 8.

8 Visit. Art. 1559, 1. 1567, 1 and 2; Injunctions, 1559, 56.

9 Injunctions, 1559, 21.

10 Injunctions, 1559, 5; Visit. Art. 1559, 4.

11 Injunctions, 1559, 7 and 26; Visit. Art. 1559, 7 and 20.

12 Visit. Art. 1559, 53.

Article

13 Injunctions, 1559, 10; Visit. Art. 1559. 10.

14 Injunctions, 1559, 4; Visit. Art. 1559, 5, 20, 13, 53

15 Injunctions, 1559, 38.

16 Injunctions, 1559, 31, 36; 1 Eliz. c. 1; Visit. Art. 1, 1559, 51.

17 Visit. Art. 1559, 33-36.

18 Injunctions, 1559, 34, 37; Visit. Art. 1559, 51.

19 Injunctions, 1559, 44.

20 None.

21 Injunctions, 1559, 25.

22 None.

23 Visit. Art. 1559, 37.

24 Visit. Art. 1559, 41-43.

25 None.

26 Visit. Art. 1559, 47. (No final clause with oath.)

II. Grindal's Visitation Articles for Province of Canterbury[1]
1576

Article

1 Queen's Injunctions, 1559, 48. Visit. Art. 1569, 1.

2 Injunctions, 1559, 10. Parts of Advertisements, 1564 and Visit. Art. 1569, 2.

4 Visit. Art. 1569, 6.

Article

5 Visit. Art. 1569, 6.

6 Injunctions, 1559, 23, 47.

7 Declaration of the Articles of Religion, 1559.

8 Prayer Book.

9 Advertisements, 1564.

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[1] Articles no. 3, 14, 16. 22. 25. 32, 34, 39, 40, 47, 52, 54, 55, 61, 63, and 64, are without precedent.

Article	
10	Injunctions, 1559, 3, 4, 8.
11	13 Eliz. c. 12.
12	Injunctions, 1559, 4, 5.
13	Injunctions, 1559, 44.
15	Injunctions, 1559, 21. Visit. Art. 1559, 16.
17	Injunctions, 1559, 5; Visit. Art. 1559, 4. Visit. Art. 1569, 10.
18	Injunctions, 1559, 16.
19	Injunctions, 1559, 9. Visit. Art. 1559, 2.
20	1 Eliz. c. 2.
21	13 Eliz. c. 12.
23	Injunctions, 1559, 31; Visit. Art. 1559, 51; Visit. Art. 1569, 18.
24	Visit. Art. 1559. 51.
26, 27, 28	Visit. Art. 1559, 5, 20, 13; Injunctions, 1559, 4; Visit. Art. 1569, 14.
29	Injunctions, 1559.
30	Injunctions, 1559, 10; Visit. Art. 1559, 10; Visit. Art. 1569, 13.
31	Injunctions, 1559, 7, 26; Visit. Art. 1559, 7, 20; Visit. Art. 1569, 11.
33	Injunctions, 1559, 26; Visit. Art. 1559, 5, 20, 13, 53; Visit. Art. 1567, 7; Visit. Art. 1569, 14.
35	Visit. Art. 1559, 53; Visit. Art. 1569, 12.
36	Visit. Art. 1559, 53; Visit. Art. 1569, 12.
37	Injunctions, 1559, 8: Visit. Art. 1569. 7.
38	Injunctions, 1559, 19.
41	Injunctions, 1559, 51.
42	Visit. Art. 1559, 6, 9-15; Visit. Art. 1567, 6.
43 and 44	Injunctions, 1559, 38; 1 Eliz. c. 2. Visit. Art. 1569, 15.
45	Injunctions, 1559, 36: Visit. Art. 1559, 51; Visit. Art. 1569, 16.
46	Injunctions, 1559, 34.
48	Visit. Art. 1569, 21.
49	Visit. Art. 1559, 47; Visit. Art. 1569, 26.
50	Visit. Art. 1569, 6.
51	Visit. Art. 1569, 19.
53	Usury, 13 Eliz. c. 8.
56	Visit. Art. 1569, 27; Visit. Art. 1569, 20.
57	Visit. Art. 1559, 30; Visit. Art. 1569, 22.
58	Visit. Art. 1559, 37; Visit. Art. 1569, 23.
59	Visit. Art. 1559, 33-36; Visit. Art. 1569, 17.
60	Visit. Art. 1559, 41, 42, 43; Visit. Art. 1569, 24.
62	Visit. Art. 1559, 47; Visit. Art. 1569, 26.
65	Visit. Art. 1569, 27. Concluding Oath to the sidesmen. New and important.

III. Whitgift's Articles for Visitation of Chichester Diocese
1585

Article	
1	Visit. Art. 1576, 1; London Visit. Art. 1581, 3.
2	In succession, London Visit. Art. 1581, 4; Visit. Art. 1576, 23; Art. for Preaching, 1583, 2.
3	London Visit. Art. 1581, 6; Visit. Art. 1576, 13, 47.
4	Visit. Art. 1576, 22.
5	London Visit. Art. 1581, 2; Art. for Preaching, 1583, 4; Visit. Art. 1576, 31, 32, 33.
6	Visit. Art. 1576, 21, 23.
7	Visit. Art. 1576, 24, 25, 40.
8	New.
9	Visit. Art. 1576, 51, 54.
10	Visit. Art. 1576, 58, 59, 60.
11	Visit. Art. 1576, 54.
12	Visit. Art. 1576, 62.
13	Archbishop's Orders to the Bishop of London, 1583, 3, 4, 5.
14	New.
15	New.

IV. Visitation Articles for Diocese of Salisbury
1588

Article	
1	Visit. Art. 1576, 27, 35.
2	Visit. Art. 1576, 26.
3	Visit. Art. 1576, 2.
4	Visit. Art. 1576, 10, 12.
5	Visit. Art. 1576, 11.
6	Visit. Art. 1576, 26.
7	13 Eliz. c. 12; Visit. Art. 1576, 20.
8	Injunctions 1559.
9	Visit. Art. 1576, 13.
10	Visit. Art. 1576, 52.
11	Visit. Art. 1576, 56.
12	Visit. Art. 1576, 59.
13	Visit. Art. 1576, 57.
14	Visit. Art. 1576, 23.
16	None.
17	Visit. Art. 1576, 5.
18	Visit. Art. 1576, 25.
19	Visit. Art. 1576, 23.
20	Visit. Art. 1576, 51.
21	New.
22	Oath from the Visit. Art. 1576, 12, for the Cathedral Visitation, and was taken by Grindal from Parker's Articles of 1567.

V. Manner in Which Visitation Articles of 1605 *Enforced Canons of* 1604, *Forming New Precedent for Such Articles*[1]

Article	
1	New.
2	II.
3	III.
4	V.
6	IV.
7	VII.
8	VIII.
9	XI.
10	Advertisements, 1564.
11	XIII.
12	XIV.
13	Visit. Art. 1576, 61.
14	XVIII.
15	XIX.
16	XX.
17	XXI, XXII.
18	XXVI, XXVII.
19	XXVIII.
20	XXIX.
21	XXX.
22	XLI.
23	XLV.
24	XLV, XLVI.
25	XLVII.
26	XLVIII.
27	XLI.
28	XLIX.
29	L, LI, LII.
30	LVI.
31	LVII.
32	LVIII.
33	LIX.
34	LXII, XCIX, C, CI.
35	LXIV.
36	LXV.
37, 38, 39	New.
40	LXX.
41	Visit. Art. 1576, 22.
42	LXXII.
43	LXXIII.
44	LXXIV.
45	LXXVI.
46	LXXVII, LXXIX.
47	XL, LXXV.
48	LXXX, LXXXI, LXXXII.
49	LXXXII, LXXXIII, XX.
50	LXXXV.
51	LXXXVIII.
52, 53, 54, 55,	New.
56	LXVI.
57	New.
58	XIX.
59	XXI.
60	XCI.
61	XCIX.
62	XCIX.
63	Visit. Art. 1576, 22.
64	New.
65	CIX.
66	CIX.
67, 68	New.
69	CXXVII.
70	New.
71	Visit. Art. 1576, 54.
72	CXXXV, CXXXVIII.
73	CXXXIX, CXL.
74	CXLI.
75	CXXXVIII.
76	Cathedral Visitation of 1567

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[1] Roman numerals relate to the number of the Canon, and the Arabic to the Visitation Articles.

THE PRECEDENT FOR CANON XXXVI OF THE CANONS OF 1604

FORMS OF SUBSCRIPTION REQUIRED OF MINISTERS

1537 (?)

Form signed by the Archbishop of Canterbury and the Bishops of Durham, London, Bath and Wells, Ely, Salisbury, Worcester, Rochester.

Original, signed, in Stowe MSS. 141 f. 36. Printed in Warner's *Facsimiles,* No. 10. Also Pocock's *Burnet,* (1865) IV, 335.

The wordes of John in hys 20 chap. (V. 21) sicut misit me pater et ego mitto vos etc, hath no respecte to a kyngys or a princes power, but onely to shew howe that the ministres of the worde of God, chosen and sent for that intente, are the messingiers of Christ to teach the trueth of his gospell and lowse and bynde synne, etc as Christe was the messinger of his Father. The wordes also of saynete Paule in the 20 Chap of the Actes (v. 28) Attendite nobis (sic vobis) et universo gregi, in quo vos spiritus sanctus posuit episcopos, regere ecclesiam dei, were spokyn to the Busshopes and prestes to be diligent pastores of the people, both to teche them diligently and also to be circumspecte, that false preachers shulde not seduce the people, as followyth immediately after, in the same place. Other places of scripture declare the highnesse and excellencye of Christen princes auctoritie and power, the which of a trewyth is moste high, for he hathe power and charge generally over all, as well busshopes and prestes as other. The busshopes and prestes haue charge of sowles within ther awne cures, power to ministre sacramentes and to teache the worde of God, to the which worde of God christen princes knowledge theym selfe subiecte. And in case the busshopes be negligent, it is the christen princes office to se theym doo ther dutie.

1551

Articles, wherunto Wylliam Phelps, Pastor and Curate of Ceciter, upon good advisement and deliberation after better knowledg geven by Gods grace and goodnes unto him, hath subscribed, consented and aggreed, willingly without force, compulsion, and all maner of impulsion; and is willing and desirous to set forth the same to his parishioners, for the better edifying of them, and declaration of his new aggreement to Gods verite and holy word.

APPENDIX

Morrice MSS. L. No. 3, f. 778. Printed, Strype, *Cranmer,* (Oxford, 1840) II, 902. from Foxe's MSS.

First, That the holy word of God doth acknowledg, confess, maintaine, avouch, hold and defend, that in the holy Sacrament and Communion of Christs precious body and bloud, the very substance, matter, nature and condition of bread and wine, do remain after the words (as they be commonly called) of Consecration, as verily and truly as they were in substance and matter bread and wine before: Although that the use of the bread and wine in the Sacrament be changed. For whereas before it was common bread and common wine, now by virtue of Gods word it is made the Sacrament of the precious body and bloud of Christ, and a seal, confirmation, and augmentation of Gods mercy and gracious promise to al men, that receive it in the faith of Jesus Christ, with hatred of sin, and intent, purpose and mind to live always a vertuous life. And that is the very Transubstantiation and change, that God delighteth in, in the use of the Sacraments, most, that we should earnestly and from the bottome of our hearts, be converted into Christ, and Christs holy commandments, to live a christen life, and to dy from sin, as he gave us example, both by his life and doctrin; and meaneth not, that the bread and wine should in substance be turned or converted into the substance of his body and bloud, or that the substance of the bread should be taken away, and in the place thereof to be the substance, matter and corporal presence of Christs corporal holy, humane and natural body.

ITEM, That the same holy word of God doth confess, hold, defend, acknowledg, and maintain, that the very natural, substantial, real and corporal body of Christ, concerning his humanity, is only and soly in heaven, and not in the Sacrament and Communion of his precious body and bloud. But whosoever worthily with true repentance, and lively faith in the promise of God, receiveth that holy Sacrament, receiveth Sacramentally by faith al the mercies, riches, merits and deservings, that Christ hath deserved and paid for, in his holy bloud and passion. And that is to eat Christ and to drink Christ in the holy Sacrament, to confirm and seal Sacramentally, in our Souls, Gods promises of eternal Salvation: that Christ deserved for us, not in, or by, his body eaten, but by, and for, his body slain and killed upon the cross for our sinns: as S. Paul saith Col. 1. Eph. 1. 3 Ebru. 2. 7, 8, 9, 10.

As for eating of his flesh, and drinking of his bloud, really, corporally, materially and substantially, it is but a carnal and gross opinion of man, besides and contrary to the word of God, and the articles of our faith, and christen religion: that affirmeth his corporal departure from thearth, placeth it in heaven above at the right hand of God the father Almighty, and keepeth, retaineth, holdeth and preserveth the same corporal body of Christ there, til the general day of judgment, as the word declareth: "From thence he shal come to judge the quick and the dead."

And that heretofore I have been in the contrary opinion, and believed my self, and also have taught other to believe the same, that there remained no substance of bread and wine in the Sacrament, but the very self same body and bloud of Christ Jesu, that was born of the blessed Virgin Mary, and hanged upon the Cross, I am with al my heart sorry for mine error, and false opinion, detesting and forsaking the same from the bottome of my heart, and desire God most heartily in, and for, the merits of his dear sons passion, to forgive me, and al them that have erred in the same false opinion by and through my means: Praying them in the tender compassion and great mercies of God, now to follow me in truth, verite and singleness of Gods most true word, as they were contented to follow me in error, superstition and blindness, and be no more ashamed to turn to the truth, then they were ready to be corrupted by falshood. If the holy Apostle S. Paul, and the great Clerk, S. Augustine, with many mo Noble and vertuous members of Christs church, were not ashamed to returne, acknowledge, and confess, their error and evil opinions; what am I, miserable creature of the world, inferior unto them both in knowledg, holines and learning, that should be ashamed to do the same? Nay I do in this part thank God, and rejoyce from the bottome of my heart, that God hath revealed unto me the truth of his word, and geven me leave to live so long to acknowledg my fault, and error: and do here before you protest, that from henceforth I will with al diligence and labor, study to set forth this mine amended knowledg, and reconciled truth, as long as I live, by the help of God in the holy Ghost, through the merits of Jesus Christ, our only

Mediator and Advocate. To whom be al honor forever and ever, Amen.

Subscribed and confirmed 29 of April 1551,
in the presence of John Bp. of Gloucester,
and divers other ther present.

1551

An assertion and defence of the true knowledge and use of the Sacrament of Christs pretious body and bloud made by John Wynter, Master of Arte, Parson of Stawnton and professed by him in the Cathedrall Church of Gloucester, viii Novembris, Anno Dni. 1551.

(Morrice MSS. L. No. III, f. 78-9)

Forasmuch as there is nothing more acceptable, nor like unto God than verity and truth, and that of all things chiefly truth is required to be in man, and specially in religion, and faith, which be the instruments, and meanes that he useth to apply his mercies and grace to every of his Elected Children, and that nothing is, or may be more injurious unto God, nor hurtfull unto man as false Religion, and corrupt faith; ffor the assertion and defence of the one, and deniall and subversion of the other, I do with all my heart, being thoroughly perswaded upon good knowledge, long and advised deliberation, without Compulsion, fear and dread for the truth sake, and contentation of my own Conscience protest, holde, maintaine, and defend that in the holy Sacrament of Christs precious body and bloud, there is no alteration of the substance of bread and wine, but they both remaine in substance very bread and very wine as well after the words (as they be called) of Consecration. as verily as they were bread and wine in substance before. And that in the same Sacrament by no maner of meanes reasons or wayes the body and bloud of Christ is Carnally bodily really or substantially present but only spiritually to the soule and eye of faith, that is to say as verily as Corporall bread and wine is present to the senses of the outward man being upon the Earth, even so is the body of Christ present to the minde and faith of man which is then errected up into heaven. And even as the bread and wine, with the word of God and Christs institution is broken, and entereth into the outward man presently, even so is the body of Christ rente and torne for the remission of sin to the consideration of faith presently. As Christ doth say this is my body which is given for you, for even as the bread is a Sacrament of his body, and the wine of his bloud, so is the breaking of it a Sacrament of the death of his body, and the Wine received according unto Christs institution, a Sacrament of his pretious bloud shedden, yet not two Sacraments, but one Sacrament as his body and the paines thereof was not two bodyes but one body. As in the breaking of the bread in the Sacrament after the wordes of Christ, which be these: That is given for you, there is no sensible feeling or painefull passion, nor killing againe of Christs pretious body, no more is there in the bread, or under the bread of the Sacrament after the words which be these, This is my body, any naturall, Corporall, or substanciall presence of the body that dyed, or of the bloud that was shed but that the bread and wine remaining in their substance, be Sacraments of Christs body and bloud, which be present unto the eyes Spiritually of faith, which is in the receiver, and not Substantially nor Corporally in the elements of bread and wine. And whosoever be of the contrary opinion, and would defend transubstantiation or corporall presence, I do condemne his faith as an errour, and opinion contrary to the expresse word of God. And will with all my learning, wit, dilligence and study daily, improue, confute, speake against, and utterly subvert unto the uttermost of my power, as God helpe me in the bloud of Christ, to whome with the Holy Ghost be laud and praise world without end, so be it. God Saue the King.

Form of Subscription and Submission Under Philip and Mary

(Harleian MSS. 425 f. 3, Copy.)

Because our savioure Christe at his laste supper toke bread and when he had gyuen thankes he brake yt and Geue yt to his Disciples and said Take eatte this is my body wch is Gyuen for yow, thys do in the Remembrance, therefore according to the wordes of our sauioure Jesus Christe we do beleue the sacrament to be Christes body; and lykewyse he tooke the Cuppe gaue thankes and gaue yt unto his Disciples And he said this is my blud of the newe testament wch is shede for many therfore lykewyse we do beleue that yt is the blude of Christe according as Christes Churche dothe mynister the Same unto the whollye Catholyke Churche of Christe, we do in this like and in all other maters Submitte ourselues promyssyng therin to liue as yt becometh ffaythfull Subiectes unto our moste gracious Kyng and Quene and unto the other superyors powers bothe spirituall and temporall Accordyng to oure bounden Duetty.

(Signed by twenty-three names, some of them women's.)

1559

Form of Subscription Used in Elizabeth's First Visitation

(The original paper signed by many of the clergy of the realm is in Lambeth MSS. Carta Miscellanea XIII, f. 57 and following. The date is almost certainly September, 1559. This seems to have been the form to which the Commission in partibus borealibus demanded subscription. Printed inaccurately in Strype, *Annals*, I, pt. i, 255.)

Wee do confesse and acknowledge the Restorying agayn of the aunciente Iurisdiccon over the state ecclesiasticall and spirituall of this Realme of Ynglande and the abolishing of all forayn power repugnante to the same according to an acte therof made in the late parliamente begonne at Westm. the xxiij daye of January in the firste yere of the Reigne of our soueraigne Lady Quene Elizabeth, and ther contynuyng and kepte to the eighte of Maye then next ensuynge; Thadmynystracion of the sacramentes, th'use and ordre of the divyne sarvice in maner and forme as it is set furthe in the Booke comonly callid the boke of comon prayer etc established by the same acte And thorders and Rules conteyned in the Iniunctions geven by the Quenes maiestie and exhibited in this presente vysitacion to be accordyng to the true woorde of god and Agreable withe the doctryne and use of the Prymatyue and Apostolik churche. In wytnes wherof wee haue hereunto subscribed our names.[1]

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[1] Most men merely signed their names, especially the city clergy but many of the country clergy signed their names and added "volens subscripsi." The later subscriptions in London used the form "propria manu subscripsi."

1559 (?)

The Othe for the Clergye

(Lambeth MSS. Carta Miscellanea XIII f. 58.)

You shall sweare that you shalbe ffaigthfull and obedient unto the Quenes Maiestie, her heires and successors, and to the uttermost of your power understanding and learning, you shall mainteign and set furth all statutes and lawes, and the religion received by her Grace or her heires and successours, and the Iniunctions at this present time exhibited by her Grace her Officers or Commissioners: and that you shall make true presentment[1] of all such thinges as are to be presented in this visitacon: so helpe you god and by the contentes of this booke.

1559

"Interpretations and further Considerations" attached to the Queen's Injunctions of 1559 *by the Archbishop and Bishops.*

(Corpus Christi College MSS. (Cambridge,), vol. 106, f. 423-424. Printed in Cardwell's *Annals,* I, 240-242.[2])

S. Scriptura in se continet omnem doctrinam pietatis: ex qua sufficienter et error omnis convinci possit et veritas stabiliri.

Symbolum Nicenum, Athanasii, et quod communiter Apostolorum dicitur, continet brevissime articulos fidei nostrae sparsim in scripturis ostensos. Qui istis non crediderint inter veros catholicos non sunt recipiendi.

Ecclesia Christi est, in qua purum Dei verbum praedicatur, et sacramenta juxta Christi ordinationem administrantur: et in qua clavium authoritas retinetur.

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[1] Perhaps this form was the one tendered to the churchwardens and sidesmen as the other was tendered to the clergy proper.

[2] There are three copies of this document, the Corpus Christi MSS. 106, Petyt MSS. 538. 38, f. 223: and Petyt MSS. 538. 47, f. 545. The differences in reading are slight and the Corpus Christi seems to be the best. All three have been printed by W. M. Kennedy, in *The Interpretations of the Bishops and their Influence on Elizabethan Episcopal Policy.* Alcuin Club Tracts, VIII, (1908). The Editor has modernised the spelling, confesses that he has altered the punctuation and that he has not collated all the differences. Nor do his comments add anything to our previous knowledge.

Quaevis ecclesia particularis authoritatem instituendi, mutandi, et abrogandi ceremonias et ritus ecclesiasticos habet: modo ad decorem, ordinem, et aedificationem fiat. . . . Justificatio ex sola fide est certissima doctrina Christianorum.

Elizabetha regina Angliæ est unicus et supremus gubernator hujus regni et omnium dominiorum et regionum suarum quarumcunque tam in rebus et causis ecclesiasticis quam temporalibus. Verbum Dei non prohibet foeminarum regimen: cui obediendum est juxta ordinationem Dei.

Romanus pontifex nullam habet jurisdictionem in hoc regno, nec alia quaecumque potestas extranea. . . .

Haec omnia vera esse et publice docenda profitemur, eaque juxta datam nobis facultatem et eruditionem tuebimur et docebimus. Hancque nostram confessionem manuum nostrarum subscriptionibus testificamur, contrariamque doctrinam abolendam esse judicamus, et detestamur.

1559

A declaration of certain principal articles of religion to be read by the said parsons, vicars, and curates at their possession taking, or first entry into their cures, and also after that, yearly at two several times.

(Cardwell, *Annals,* I, 263-267. A contemporary broad-sheet is in Corpus Christi MSS. 106, f. 422.)

FORASMUCH as it appertaineth to all Christian men, but especially to the ministers and the pastors of the church being teachers and instructors of others, to be ready to give a reason of their faith, when they shall be thereunto required: I, for my part, now appointed your parson, vicar, or curate, having before my eyes the fear of God, and the testimony of my conscience, do acknowledge for myself and require you to assent to the same:

I. That there is but one living and true God of infinite power, wisdom, and goodness, the Maker and Preserver of all things; and that in unity of this Godhead there be three Persons, of one substance, of equal power and eternity, the Father, the Son, and the Holy Ghost.

II. I believe also, whatsoever is contained in the holy canonical scriptures, in the which scriptures are contained all things necessary to salvation, by the which also all errors and heresies may sufficiently be reproved and convicted, and all doctrine and articles necessary to salvation established. I do also most firmly believe and confess all the articles contained in the three Creeds, the Nicene Creed, Athanasius' Creed, and our common Creed called the Apostles' Creed; for these do briefly contain the principal articles of our faith, which are at large set forth in the holy scriptures.

III. I do acknowledge also that church to be the spouse of Christ, wherein the word of God is truly taught, the sacraments orderly ministered according to Christ's institution and the authority of the keys duly used; and that every such particular church hath authority to institute, to change, clean to put away ceremonies, and other ecclesiastical rites, as they be superfluous, or to be abused, and to constitute other making more to seemliness, to order, or edification.

IV. Moreover I confess that it is not lawful for any man to take upon him any office or ministry, either ecclesiastical or secular, but such only as are lawfully thereunto called by their high authorities according to the ordinances of this realm.

V. Furthermore I do acknowledge the queen's majesty's prerogative and superiority of government of all estates and in all causes as well ecclesiastical as temporal, within this realm, and other her dominions and countries, to be agreeable to God's word, and of right to appertain to her highness, in such sort, as is in the late act of parliament expressed, and sithence by her majesty's injunctions declared and expounded.

VI. Moreover touching the Bishop of Rome, I do acknowledge and confess, that by the Scriptures and Word of God he hath no more authority than other bishops have in their provinces and dioceses: and therefore the power, which he now challengeth that is, to be the supreme head of the universal church of Christ, and to be above all emperors, kings, and princes, is an usurped power, contrary to the scriptures and word of God, and contrary to the example of the primitive church, and therefore is for most just causes taken away and abolished in this realm.

VII. Furthermore I do grant and confess, that the book of common prayer and administration of the holy sacraments, set forth by the authority of parliament, is agreeable to the scriptures, and that it is catholic, apostolic, and most for the advancing of God's glory, and the edifying of God's people, for that it is in a tongue, that may be understood of the people, and also for the doctrine and form of ministration contained in the same.

VIII. And although in the administration of baptism there is neither exorcism, oil, salt, spittle, or hallowing of the water now used, and for that they were of late years abused and esteemed necessary, where they pertain not to the substance and necessity of the sacrament, that they be reasonably abolished, and yet the sacrament full and perfectly ministered to all intents and purposes, agreeable to the institution of our Saviour Christ.

IX. Moreover, I do not only acknowledge that private masses were never used amongst the fathers of the primitive church, I mean public ministration and receiving of the sacrament by the priest alone, without a just number of communicants, according to Christs saying, "Take ye and eat ye," etc, but also, that the doctrine, that maintaineth the mass to be a propitiatory sacrifice for the quick and the dead, and a mean to deliver souls out of purgatory, is neither agreeable to Christ's ordinance, nor grounded upon doctrine apostolic, but contrarywise most ungodly and most injurious to the precious redemption of our Saviour Christ, and his only sufficient sacrifice offered once forever upon the altar of the cross.

X. I am of that mind also, that the holy communion or sacrament of the body and blood of Christ, for the due obedience to Christ's institution, and to express the virtue of the same, ought to be ministered unto the people under both kinds. . . . Last of all, as I do utterly disallow the extolling of images, relics, and feigned miracles, . . . wandering on pilgrimages, setting up of candles, praying upon beads, and such like superstition . . . so do I exhort all men to the obedience of God's law. . . .

These things above rehearsed, though they be appointed by common order, yet I do without all compulsion, with freedom of mind and conscience, from the bottom of my heart, and upon most sure persuasion, acknowledge to be true and agreeable to God's word; and therefore I exhort you all of whom I have cure, heartily and obediently to embrace and receive the same, that we all joining together in unity of spirit, faith and charity, may also at length be joined together in the kingdom of God, and that through the merits and death of our Saviour Jesus Christ, to whom with the Father and the Holy Ghost, be all glory and empire now and forever. Amen.

1564

Protestations to be Made, Promised, and Subscribed by Them That Shall Hereafter Bee Admitted to Any Office, Roome, or Cure in Any Churche, or Other Place Ecclesiasticall

(Annexed to Parker's Advertisements. Printed in Cardwell's *Annals*, I, 330-331. The form of 1561 was almost exactly the same. see *id.*, 302.)

Inprimis, I shall not preache or publiquely interprete, but onely reade that whiche is appointed by publique authoritye, without special licence of the bysshope under his seale. I shall reade the service appointed playnly, distinctly, and audibly, that all the people may heare and understande.

I shall keepe the register booke accordinge to the queenes majesties injunctions.

I shall use sobrietie in apparrel, and specially in the churche at common prayers, according to order appointed.

I shall move the parishioners to quiet and concorde, and not geve them cause of offence, and shall helpe to reconcile them, whiche be at variaunce, to my uttermoste power.

I shall reade daylie at the leaste one chapter of the Old Testament, and another of the Newe, with good advisement to thincrease of my knowledge.

I do also faithfully promise in my person to use and exercise my office and place to the honour of God, to the quiet of the queenes subjects within my charge, in truth, concorde, and unitye. And also to observe, kepe, and mentayne suche order and uniformity in all external policye, rites and ceremonies of the Church, as by the lawes good usages and orders are already well provided and established.

I shall not openlye intermeddle with any artificers occupations, as covetously to seke gayne thereby, havinge in ecclesiastical lyvinge to the somme of 20 nobles or above by yere.

1567

Form Used in the Diocese of Ely

(Diocesan Registry, Ely MS. Book labelled, "Dean and Chapter 1567." In this are all the other forms quoted here.)

We whose names are hereafter written do promise by vertu of our obedience to the Queenes most excellent Maiestie that we will ffrom hensforthe dulye trulie and ffaithfullie obserue and kepe all and singular the contentes in the booke of comon prayer and the Queenes Maiesties Injunctions prescribed and sett forthe by hir highnes aucthoritie aswell concerninge our owne persons as also concerninge the orders, Rightes and Ceremonies to be used and obserued in the Celebration of the Devine seruice and instruction of goddes holye Sacramentes accordinge to the trew meaninge of the same Iniunctions without any Innovation or Alteracon."

(Signed by 42 clergymen. Original paper.)

1571

Form Used in the Diocese of Ely

(Diocesan Registry, Ely.)

27 Aug. 1571. Articles to be subscribed by priests of Ely. Imprimis that the booke of publique prayer is suche as contaynethe nothinge in yt repugnynge or contrarie to the worde of God.
Item, that the apparrell ordeyned by law and commended by the prince to the ecclesiasticall ministers ys not wicked but tollerable and to be used obedientlie for order and cumlines only.
Item. that the Articles of sincere and true religion agreed uppon in the last convocacion set forth by the quenes Maiesties assent and established allso by parliament conteyne most godlie and holsum doctryne agreeable unto Gods hollye worde.

(Original paper, signed by 74 men.)

1573

Form Used in the Diocese of London

(Petyt MSS in the Inner Temple, London. 538. 47. f. 505.)

First that the Booke comonly called the Booke of Common praier for the Churche of Englande authorized by Parliament and all and every the contents therin be such as are not repugnante to the worde of God.

That the maner and order appoynted by publique authoritie aboute the administracon of the sacramentes and comon praiers, and that the Apparell by sufficient authoritie apoynted for the mynisters within the Churche of Englande be not wicked nor agaynst the worde of God but tollerable: and beinge Comanded for order and obedience sake are to be used. That the articles of religion whiche onlie concerne the Confession of the true Christian ffaithe and the Doctrine of the Sacramentes comprised in a booke imprynted. intituled Articles wherupon it was agreed by the Archbushopps and Busshops of Bothe Prouinces and the whole Clergie in the Conuocation holden at London in the yere of oure Lorde god, 1562 according to the Computacon of the Churche of Englande, and everye of them, conteyne true and godlie Christian Doctrine.

(Original paper, Six signatures.)

(Other copies on f. 504, 512, and 519., the latter adding as follows,)

We whose names are underwritten do acknowledge the Contentes of theis above written Articles to be true, and further doe promise to submitt and conforme ourselves agreable unto the same, which our submission and promise of Conformitie, we testifie by the subscribing of our names with our owne handes.

1573

A Submission to Publick Order and Rites Set Down in Publick Prayer and Administration of Sacraments (*9 December*)

(Morrice MSS. B. II, f. 97.)

1 I acknowledge the Booke of Articles agreed upon by the clergy of this Realme in a Synode holden A° Dni. 1563 and confirmed by the Queenes Maiestie to be sound and according to the word of God.

2 The Queenes Maiestie is the chief Gouvernour nex under Christ of this Church of England, as well in ecclesiasticall as in Civill Causes.

3. I acknowledge that in the booke of Common Prayer there is nothing evill or repugnant to the word of God, but that it may be well used in this our Christian Church of England.

4 I acknowledge that as the publick preaching of the word in this Church of England is sound and sincere, so the publick order of Administration of Sacraments is consonant to the word of God.

And whereas I have in publick prayer and Administration of Sacr: neglected and omitted the Order by publick authority set down, following mine own fantasie in altering adding and omitting of the same not using such Rites as by Law and Order are appointed, I acknowledge my fault therein, and am sory for it, and humbly pray pardon for that disorder. And here I do submit myselfe to Order and Rites set downe. And I doe promise that I will from hence forth in publick prayer and administration of the Sacr: use and observe the same, the which thing I do presently and willingly testifie with the subscription of mine own hand.[1]

1573

Forms of Submission in Northamptonshire

(Morrice MSS. C. 198.)

FORMA OBJURATIONIS

In which forma obiurationis they required not to tollerate but by oath and subscribing to affirme that all things in it are agreeable to the word of God. wherein we should have allowed the Baptisme of women. Secondly, they required of us with the like oath and subscription, that we should never hereafter either in publick or private speech use any words against any thing contained in the said Booke. And in which forma promissionis, they required first as in the second Article in forma Abjurationis. Second we should with subscription have allowed the booke set forth for Ordaining of Ministers and Deacons, which besides that we did never see it, it seemeth by that meanes have allowed those ministers which are not able to preach.

FORMA PROMISSIONIS

I, A. B. Do promise before you mine Ordinary that I will henceforth (so long as by Law and lawfull Iniunctions of this Realme I shall be bound to do it) use the Service and Common Prayer, and Administ: of the Sacr. in my Church and parish of A. or elsewhere I shall hereafter serve in any Cure in all points to my power according to the Rites, Order, Form, and Ceremonies prescribed in the booke of Common Prayer Authorized by an Act of Parliament in the first year of the Queenes Majesties Reigne. And that I will not hereafter preach or speak any thing tending or sounding to the Derogation or Deprauing of the said Booke, or any point or parcell thereof remaining, authorized by the Lawes and Statutes of this Realme. Protesting further that the Booke of Consecration of Archbpps and Bps and of the Ordering of Ministers and Deacons lately set forth in the time of K. Edward the sixth and confirmed by the authority of Parliament, doth containe in it all things necessary for such consecration and Ordering, having in it nothing that is either superstitious or ungodly to my Judgement. And therefore that they which be Consecrated and Ordered according to that same Booke be duely, Orderly and Lawfully ordained and Consecrated. And that I do acknowledge my duty and obedience to mine Diocesan and Ordinary, as to a lawfull Magistrate under the Queenes Majesty so far forth as the Lawes and Statutes do require which obedience I do promise according as the Lawes shall bind me to performe, for testimony hereof I do subscribe my name hereunto.

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[1] Except for the last clause beginning "And whereas," this form is verbatim that agreed to by Mr. Dering. December 16, 1573. (Morrice MSS. A, f. 117.) Other forms offered by individuals and differing somewhat from these given here, are in Morrice MSS. C, f. 200, 201, 285, 286, 324, 325, 359, 360-368.

1575—6

Form Used in the Diocese of Ely

(Diocesan Registry, Ely. Original, signed.)

Ego, Richardus Bancrofte, admittendus per Reuerendum in Christo patrem Rich. diuina prouidentia Elies: episcopum ad rectoriam de Teversham in presentia dicti reuerendi patris constitutus: subscribo omnibus articulis de quibus convenit inter Archiepiscopos et episcopos huius regni Angliae in convocatione etc., 1562, hac mea subscriptione consensum et assensum significans 24 Martii, Anno domini secundum computacionem ecclesiae Anglicanae 1575 atque etiam articulis in titulo huius subscriptionis me essent (sic) me testor presentibus.

per me Richardus Bancrofte.

1579

Form Used in the Diocese of Ely

(Diocesan Registry, Ely.)

Ego, Samuel Fleming admittendus per reuerendum in Christo patrem et Dominum Richardum prouidentia diuina Eliensem episcopum ad praedicandum et expondendum verbum dei infra diocesim Eliensem in praesentia dicti Reuerendi patris constitutus agnosco nihil contineri in libro qui inscribuntur the booke of Comon Prayer, etc., quod repugnet verbo dei omnesque et singulos articulos de quibus conuenit inter Archiepiscopos et episcopos istius regni Angliae etc, in convocatione etc. 1562 regiaque autoritate confirmatos veram et sinceram religionem continere. qua propter hac mea subscriptione assensum et consensum meum eisdem significo et declaro. Feb. 1579.

per me Samuel Fleming.

1583—4

Whitgift's Three Articles

"Articles touching preachers and other orders for the Church" Article VI. (Printed in Cardwell's *Annals,* I, 468.)

That none be permitted to preach, reade, catechise, minister the sacraments or to execute any other ecclesiasticall function, by what authority soever he be admitted thereunto, unless he consent and subscribe to these articles following, before the ordinary of the diocese, wherin he preacheth, readeth, catechiseth, or ministreth the sacraments, videlicet:

I. That her majestie, under God, hath and ought to have the soveraigntie and rule over all manner of persons born[1] within her realmes, dominions, and countries, of what estate, either ecclesiastical, or temporal soever they be: and that no[2] foreign power, prelate, state, or potentate hath or ought to have any jurisdiction, power, superioritie, preeminence, or authoritie ecclesiastical or spiritual, within her majesties said realmes, dominions, and countries.

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[1] The original paper subscribed in the diocese of London in 1586 is in Lambeth MSS. Carta Miscellanea, XIII, f. 59. It omits here the word "born."

[2] Adds "other" here.

II. That the book of common prayer, and of ordering bushops, prestes, and deacons, conteyneth nothing in it contrary to the word of God, and that the same may lawfully be used and that he himself[1] will use the forme of the said book prescribed in public prayer, and administration of the sacraments and none other.

III. That he[2] alloweth the book of articles of religion, agreed upon by the archbushops and bushops of both provinces, and the whole clergy in the convocation holden at London in the yere of our Lord God M. D. LXII. and set forth by her majesties authority, and that he believeth[3] all the articles therin conteyned to be agreable to the word of God.

1604

Canon XXXVI

Subscription required of such as are to be made Ministers

No person shall hereafter be received into the ministry, nor either by institution or collation admitted to any ecclesiastical living, nor suffered to preach, to catechize, or to be a lecturer or reader of divinity in either university or in any cathedral or collegiate church, city, or market-town, parish-church, chapel, or in any other place within this realm, except he be licensed either by the archbishop, or by the bishop of the diocese, where he is to be placed, under their hands and seals, or by one of the two universities under their seal likewise; and except he shall first subscribe to these three articles following, in such manner and sort as we have here appointed.

I. That the king's majesty, under God, is the only supreme governor of this realm, and of all other his highness's dominions and countries, as well in all spiritual or ecclesiastical things or causes, as temporal; and that no foreign prince, person, prelate, state, or potentate hath, or ought to have any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within his majesty's said realms, dominions, and countries.

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[1] London form reads, "yow who do subscrybe."

[2] London form reads, "yow.

[3] London form reads, "yow do beleeue."

II. That the Book of Common Prayer, and of ordering of bishops, priests, and deacons, containeth in it nothing contrary to the word of God, and that it may lawfully so be used; and that he himself will use the form in the said book prescribed, in public prayer, and administration of the sacraments, and none other.

III. That he alloweth the Book of Articles of Religion agreed upon by the archbishops and bishops of both provinces and the whole clergy in the convocation holden at London in the year of our Lord God one thousand five hundred sixty and two, and that he acknowledgeth all and every the articles therein contained, being in number nine and thirty, besides the ratification, to be agreeable to the word of God.

To these three articles whosoever will subscribe, he shall for the avoiding of ambiguities, subscribe in this order and form of words, setting down both his Christian and surname, viz. "I, N. N. do willingly and ex animo subscribe to these three articles above mentioned and to all things that are contained in them." And if any bishop shall ordain, admit, or license any, as is aforesaid, except he first have subscribed in manner and form as here we have appointed, he shall be suspended from giving of orders and licenses to preach, for the space of twelve months. But if either of the universities shall offend therein, we leave them to the danger of the law, and his majesty's censure.

THE PRECEDENT FOR THE OATH OF ALLEGIANCE

1581 (?)

The Oath Tendered to Campion and Others

(Lansdowne MSS. 155, f. 87.)

I acknowledge that our soueraigne Ladie Queene Elizabeth nowe raigning in England is the true and lawfull Queene of this Realme and whilest she liveth, ought to possesse and enioy the Crowne and kingly gouernance therof, and I and all other of the nation of England are her liege subiectes, and owe and shall owe to beare to her the allegiaunce and obedience of subiectes notwithstanding any acte or sentence yt any Pope or other person Church or bodie hath done or giuen, or can doe or giue. And that the pretended excommunication, sentence or Bull of Pius the Vth declaring her Maiestie an heretique and depriued of her Crowne, and her subiectes dischardged of their allegeaunce to hir, and euery like iudgment or sentence that hath bene, shall or may be had by anie Pope or other, is and shall be false and erronious and of noe validitie toward her Maiestie or her subiectes, and that all risinges and taking of armes and persuasions thereunto against her Maiestie by the late rebbells in the North, or Saunders, and any other in Ireland, or any other her subiectes were and be unlawfull and ungodlie doinges, and damnable treasons, notwithstanding any warrant, excommunication, bull, comaundement, absolution or other matter whatsoeuer had or pretended or that may be had from or by any Pope or other body or person, or any regard or pretence of any Church called Catholique or any other matter whatsoeuer.

1593

The Oath of Submission

(In the Statute of 35 Eliz. c. 1. sect. iii)

I, A. B. do humbly confess and acknowledge, That I have grievously offended God in contemning her Majesty's godly and lawful government and Authority, by absenting myself from Church, and from hearing Divine Service, contrary to the godly Laws and Statutes of this realm, and in using and frequenting disordered and unlawful Conventicles and Assemblies, under Pretence and Colour of Exercise of Religion: And I am heartily sorry for the same, and do acknowledge and testify in my Conscience, That no other Person hath or ought to have any power or Authority over her Majesty: and I do promise and protest without any Dissimulation, or any Colour or Means of any Dispensation, That from henceforth I will from Time to Time obey and perform her Majesty's Laws and Statutes, in repairing to the Church and hearing Divine Service, and do my uttermost endeavour to maintain and defend the same.

1602 (?)

A forme of submission exhibited to her Matie of Englande by the pryestes and Catholiques of the same nation

(Petyt MSS. 54, f. 392. Printed in *The Archpriest Controversy,* II, p. 246. We cannot be certain whether this and the following form precede or follow that of January 31, 1602-3.)

We English pryestes and other Catholiques of England promise, protest and sweare in the presence and handes of, etc., that we are and euer wilbe most humble subiectes and servauntes of Quene Elizabeth, our soueraigne, redye to render her al due obedience and fidelitye, and we doe and euer shal acknowledge her for our soueraigne and mystres. And we protest and sweare lykewise that we wyll houlde no Intellicence with eny prince, potentate or other estate or particuler person whatsoeuer in praeiudice of the dignitye, authoritye, or person Royal of her Matie or her estate.

1602 (?)

An oath of Allegeance thowght vpon by some Catholickes

(Petyt MSS. 38, f. 168. Printed in *Archpriest Controversy,* II, p. 247.)

I, A. B. doe acknowledge in my conscience and confesse vnfeynedly that the Quenes most excellent Matie Q: Elizabeth, now in possession of the Crowne of this Realme, is the true vndowbted and lawfull Quene of England and Ireland: and that accordingly all the people and subiectes of England and Ireland, of what degree or callinge so ever they be, ought and are bound by the word of God faithfully to serve, honor, and obey her Highnes, as theyr onlye true vndoubted and lawfull soveraigne Quene; notwithstandinge any forayne or domesticall power, preheminence or authoritye, or any doctrine, opinion or writinge, that eyther hath allready or that shall hereafter affirme, comaund or teach the contrarye. And furthermore albeyt the B: of Rome for the tyme beinge doe or shall hereafter attempt (eyther by any bull or sentence made, given, or to be made, given or published by himselfe or in his owne name, or by force of any former bull or sentence pretended to be allready made, given, denounced and published by any of his predecessors) to pronounce, declare or publish, or suffer to be denounced, declared or published, that her Maiestie is, or ought to be, deprived of her kingdome, and so consequently no true and lawfull Quene of England and Ireland; and that the subiectes and people of these lands, are discharged of theyr allegiance, and obedience vnto her highnes; and in like manner, although the sayd B: of Rome or any other by his apointment or authority or by the apointment or authority of any other, shall invade eyther the Realme of England or Ireland, or shall attempte by force of Armes, to overthrow the present estate of this[1] kingdom, or of the religion now professed and established by her Maiesties lawes and ordinances whether it be vnder colour of the restitution of the Romish religion, or vnder what other pretence so ever it be: yet notwithstandinge I doe acknowledge myselfe bound in my conscience, to take part with her Maiestie against all such persons and theyr forces. And therfore I doe vnfeynedly professe and affirme, that I will ever be redye, with my bodye and goodes, to withstande to myne uttermost power and abilitye any such forcible and violent attemptes with the like faith and true allegiance that becometh all dutifull and faithfull subiectes of any other Christian prince to withstande any enemye that shall seeke by force of Armes. of malice and withowt iust cause, to invade or assalt any of theyr possessions, dominyons or Contreyes. And all these pointes I acknowledge, confesse, affirme, and professe, so helpe me God.

1602-3

Form of Subscription Offered Bancroft by the Secular Priests

(Harleian MSS. 360, f. 30. Original, Docketed by Bancroft "This was delyvered to me by the priestes." Copy in S. P. Dom. Eliz. 287, n. 14. Two drafts of it are in Petyt MSS. 54, f. 233, and 54, f. 396. Printed in Tierney's *Dodd's Church History,* III, p. clxxxviii from a MS. at Stonyhurst.)

Whereas it hath pleased our dread soveraigne to take notice of the faith and loyalty of us her naturall borne subiectes, secular priestes: and of her princely clemency hath given a sufficyent earnest of some mercifull favor towardes us, being all subiect by the lawes of the Realme to death by our returne into our contry, after our taking of the order of priesthood, since the first yeare of her Majesty's raigne, and only demaundeth of us, for this intended favour, an assurance of the sayd fidelity unto her Majestys person, Crowne, estate and dignity: we whose names are underwritten in most humble wise prostrate at her Majestys feet doe acknowledge our selves infinitely bound unto her Majesty therfore, and are most willing to give such assurance, and satisfaction in this point, as any catholicke priestes can give unto theyr soveraignes.

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[1] Mr. Law reads "his" instead of "this."

ffirst therfore we acknowledge and confesse the Queenes Majestie to have as full authority, power and soveraignty over us, and over all the subiectes of the Realme, as any her Highnes predecessors ever had. And further we protest, that we are most willing, and redy to obey her in all cases and respectes, as farre forth, as ever Christian priestes within this Realme, or in any other Christian contry were bound by the law of god, and Christian religion to obey theyr temporall princes.

Secondly Whereas for these many yeares past diverse conspiracyes against her Majestys person and estate, and sondry forceable attemptes for invading, and conquering her dominions have been made, under (we know not what) pretences and intendments of restoring catholicke religion by the sword, (a course most strange in the world, and undertaken peculiarly and solely against her Majestie, and her kingdomes among other princes departed from the religion and obedyence of the See Apostolicke no lesse then she) by reason of which violent enterprises, her Majestie (otherwise of singular clemency towards her subiectes) hath been greatly moved to ordaine, and execute severer lawes against the catholicks (which by reason of theyr unyon with the Sea Apostolicke in faith and religion were easily supposed to favor those conspiracyes and invasions) then perhaps had ever been enacted, or thought upon, if such hostility and warres had never been undertaken: we to assure her Majestie of our faithfull loyalty also in this particular case sincerely protest and by this our publicke facte make knowen to all the Christian world, that in these cases of conspiracyes and invasions, which hereafter may be made by any forraine prince or potentate for the disturbance or subversion of her Majestys state, and Dominions, under the foresayd pretences and intendments: we will according to the rules of Christian religion, defende our prince and contry from all theyr violent assaultes and iniuryes: and moreover we will, not only ourselves resiste them, as inconvenyent meanes to induce catholicke religion into our contry, but also earnestly perswade lay catholickes to doe the same.

Thirdly if upon any such invasions, the pope shold excommunicate every one, that wold not forsake the foresayd defence of her Majestie and the Realme, and take parte with such conspirators, and invadors: in this case we doe thinke ourselves, and the lay catholickes not bound in conscience to obey this censure, but will defende our prince and contry.

And bicause nothing is more certaine then, that whilest we indevor to assure her Majestie of our dutifull affection and allegiance by this our Christian and sincere protestation there will not wante who will condemne and misconstrue our lawfull facte: yea and by many sinister suggestions and calumnyes discreditt our doing with the christian world but chiefly with the popes holines, to the greatest preiudice and harme of our good names and persons, that may be, oneles maturely we prevent theyr malice herein: We most humbly beseech her Majestie, that in this our recognizing and yealding Cæsars due unto her, we may also by her gratious leave be permitted (for avoyding obloquy and calumnyes) to make knowen by like publicke acte, that by yealding her right unto her, we departe from no bonde of that Christian duty which we owe to our supreme spirituall pastor.

And therfore we acknowledge and confesse the Bishop of Rome to be the successor of St. Peter in that Sea and to have as ample and no more authority, or iurisdiction over us and other Christians, then had that Apostle by the guifte and comission of Christ our saviour: and that we will obey him so farre forth as we are bound by the lawes of god to doe, and may stande with performance of our duty to our temporall prince in such sorte, as we have before professed. ffor as we are most redy to spende our blood in the defence of her Majestie and our contry: so we will rather loose our lives then infringe the authority of Christes catholicke church.

1604

Oath Offered by the Priests

(S. P. Dom. Jac. I, VIII, n. 125.)

Nos presbeteri seculares et regulares aliique Catholici Angli iuramus promittimus et protestamur tanquam membra ciuilis et politici corporis huius Regni Angliæ quod Regem nostrum Jacobum eius nominis primum solum et supremum mediatorem post Deum huius ciuilis corporis caput agnoscimus sine ulla referentia aut dependentia alterius cuiuscumque terrestris potestatis aut Iurisdictionis illique et successoribus suis omnem fidelitatem obedientiam et subiectionem exhibebimus et authoritatem potestatem et principatum æque amplum sicut prædecessoribus suis Regibus prædecessores nostri sacerdotes exhibuerunt.

Iuramus item et protestamur quod nec tempore quo sacris initiati fuimus nec alio quocumque tempore aut loco sacramento aliquo nos unquam obstrinximus taliæ obedientiæ aut submissione externæ alicui Iurisdictioni quæ irritum vacuum aut hypotheticum possit reddere. hoc nortrum fidelitatis iuramentum ad?
eorum a quibus ordinati fuimus neque ad libitum illos posse dispensare neque talem nos dispensationem accepturos. Iuramus insuper et protestamur quod nullum unquam commercium intelligentiam aut negotiationem vel antehac habuimus vel imposterum habituri sumus cum principe aliquo prælato aut Monarcha siue persona quacumque cuiuscumque loci aut ordinis domi vel foris sub quocumque prætextu in præiuditium damnum vel discrimen regiæ personæ aut regnorum et dominorum suorum sed quod semper omni fide et obsequio parati erimus etiam cum sanguinis nostri effusione dictum nostrum Regem et successores suos defendere, omnesque quibuscumque nos uiuere contigerit ad eandem obsequii promptitudinem verbo et exemplo excitare et persuadere contra omnes quascumque externas inuasiones et practicas aut domesticas rebelliones aut conspirationes quæcumque sub quocumque prætextu aut authoritate quacumque fuerint machinatæ aut excitatae contra pacem personam, coronam et dignitatem Regis nostri et domini et regnorum et dominorum suorum, Idque nos facturos pollicemur non obstante quacumque excommunicatione aut censura ecclesiastical in contrarium fulminata aut fulminanda,

aut idipsum nos omnes majestati suæ subditos quibuscum nos conuersari contigerit instructuros et persuasuros sanctissime pollicemur.

1604

A Proiecte of Articles to examyn papistes upon

(Petyt MSS. 538. 38, f. 186. Endorsed by Bancroft, "my Draught, 1604.")

I am fully persuaded in mie conscience and doe stedfastly beleeue that the Bishop of Rome hath no lawfull intereste, right or title, to the Crowne of Englande, either to possesse it himselfe or to conferr it to anye other. And therfore whosoeuer being borne in Englande, Scotlande or Irelande or in any other place actuallye in the possession of the Crowne of Englande, doth holde the contrarye or doth affirme either by worde or writinge, that the Pope hath any authoritie for anye cause or pretence whatsoeuer, to bestowe the crowne of Englande, as he thinketh meete, or that none can be a lawfull, absolute, and complete Kinge of England except he haue first the popes approbation or consent thereunto: I doe not only thinke, that herein he erreth, but doe likewise iudge and condemne him to be a traitor both to the Crowne and Kingdome of Englande.

2. I am fully persuaded in mie conscience and doe steadfastly beleeue that James Stewart nowe in the possession of the crowne of England, is trulye, iustlye and rightfullye both by the lawes of god and of this Kingdome, the true lawfull and rightfull Kinge thereof; notwithstandinge that he denieth the Pope's Supremacie, and holdeth diuers pointes in religion to be true and accordinge to the worde of god, which the Bishop of Rome and those who are sworne to maintaine his supremacie, doe affirme to be heresies; and accordingly I doe professe and confesse that I myselfe nowe am and that I ought still to continue a true faithfull and loyall subiect unto King James, notwithstandinge that he holdeth and maintaineth the saide opinions in religion so by the Pope condemned. And therfore whosoeuer beinge borne in Englande, Scotlande or Irelande or in any other place actuallye in the possession of the Crowne of Englande, doth either by worde,

or writinge holde or maintaine that bicause James Stewart doth beleeue and professe the saide pointes of religion to be true, which the Pope condemneth for heresies, that therefore or for any other cause, he is not de iure by the worde of god, and the lawes of this kingdome, the true and rightfull Kinge thereof, and so ought to be, or that he himselfe whosoeuer, borne as it is aforesaide, is not, and so ought to continue, a true, dutifull, and loyall subiecte unto Kinge James notwithstandinge that he beleeuethe and mainteinethe the saide opinions in religion which the Pope so condemneth: I doe not only thinke that therein he erreth, but doe likewise iudge and condemne him to be a traitor both to the kinge and to his naturall Countrye.

3. I am fully perswaded in my conscience and doe stedfastly beleeue, that the Bishop of Rome hath no authoritie to absolue or sett free either me or anye other person whatsoeuer, borne either in Englande, Scotlande, or Irelande, or in any other place that is actuallye in the possession of the Crowne of Englande, from our duties, subiection and allegeance unto Kinge James nowe raigninge, notwithstandinge that he beleeueth and maintaineth diuers pointes in religion which the Pope and those who are sworne to his Supremacie, doe affirme to be heresies. And therefore whosoeuer, borne as is aforesaide, shall either by worde or writinge holde or mainteine the contrarye or shall affirme, that the Pope hath any authoritie either ouer me, or ouer anie other so borne to commaunde us, when he thinketh it expedient or behooffull for the Church of Rome or in any respecte, to beare armes against our Soveraigne Kinge James, or to doe ourselues or giue our consentes to the contriuinge or doing of any acte or actes that maye in any sorte tende to the preiudice, hinderance, or harte of Kinge James now raigninge, his kingdome, his regall governmente, or of his sacred person; because he mainteineth some pointes in religion, which the Pope hath condemned for heresies, or for any other cause or causes whatsoeuer; or that the Pope hath anye lawfull authoritie to cure me or any other borne as is aforesaide, for disobeyinge suche his (the saide Pope's) commandementes: I doe not only thinke, that therein he erreth, but doe likewise iudge and condemne him to be a traitor to King James and to his naturall Countrye.

4. I am fully perswaded in mye conscience and doe stedfastly

beleeue, that the doctrine of the Gospel is neither preiudiciall to ciuill gouernment as Julian the Apostate and other wicked persons in the Primitiue Church did slaunder it; nor that the embracinge of it doth either ratifie the false title of an usurpinge Kinge, or the reiectinge of it preiudice the true interest which any lawfull Kinge had to his kingdome, when first he receaued it, nor that it bringeth any thing els with it into a civill state well setled, but the Kingdome of Heauen or departinge thence taketh anye thinge els away with it, but that which it brought; nor that much lesse my soueraigne Lord King James professinge the doctrine of the Gospel and the maintenance of Christianity (though it were true that he erreth in holding of some pointes in religion which the Bishop of Rome hath condemned for heresies; and that he doth indeede punishe some of them, who in those pointes doe holde against him with the Bishop of Rome,) ought or maye lawfully therefore be disturbed, or preiudiced in his regall and civill gouernment by anye of his naturall borne subiectes under any such pretence. And therefore whosoeuer holdeth and mainteineth when the Apostles of Christ did comande all Christians to obey and be subiecte not only for feare, but likewise for conscience sake, to the civill Magistrates and Emperours who in those dayes bare rule, and were then both enimies of the Gospel and persecutors of such as professed it; that they (the saide Apostles) in those and such like places of the Scriptures, in the Newe Testament did but temporize and dissemble as meaninge that such theire preceptes shoulde binde Christians no longer but untill there number should be so increased, as that they might be able without any great damage by force of armes to suppresse such civill Magistrates and Emperours, and rather than faile to murther them; and that then they might lawfully so doe either themselues, and by their owne authoritie or by the direccon of those that shoulde succeede St. Peter in the Bishopricke of Rome: I doe verily beleeue in mye conscience that he or they whosoeuer Pope, Cardinall, Jesuite, saecular priest or any other person, that doth so interpret such places of the Apostles in the newe Testament, doth shamefullye peruert their meaninge and blaspheme the holy ghost, by whose instinct and direccon they did so write; and that the Deuill himself could neuer haue conceaued a more pestilent deuise, for the utter discreditinge of the whole Scriptures.

1605

(Petyt MSS. 538. 38. f. 212. docketed in Bancroft's hand, "1605 myne.")

I, A. B. doe truely and syncerely acknowledge, professe, testifie, and declare in my conscience before God and the world that our Soueraigne Lord, King James is lawfull and rightfull King of this realme, and of all other his Majesty's dominions and Countries: And that aswell you, before whome I make this recognition and acknowledgement as all others, put on authoritie by his majestie are lawfull Magistrates: and that I am bounde in conscience by the worde of god, to speake the truthe syncerely and unfaynedly according to the asking and understanding of you, that doe examine me:[1] And that the Pope neither of himself, nor by any authoritie of the Church or Sea of Rome, or by any other meanes with any other, hath any power or authoritie to depose the King; or to dispose any of his Majesty's kingdomes or dominions, or to discharge any of his subiectes of their allegeance, and obedience to his Maiesties; or to giue license or leaue to any of them to beare armes, raise tumult or to offer any violence or hurt to his Maiesty's Royall person, state or gouernment, or to any of his Majesty's subiectes, within his Majesty's dominions. And all these thinge I doe acknowledge syncerely, according to these expresse wordes by me spoken, without any equivocation or mentall evasion, or secret reseruation whatsoeuer. And I do make this recognition and acknowledgement hartily, willinglie, and truely and so subscribe it with mine owne hand for satisfaction of all, that esteeme or call themselues Catholick who either haue held or thought the Contrarie, or doubted thereof. All which I doe plainely and syncerely vow, protest and acknowledge, uppon the true faith of a Christian Catholick.

So helpe me God.

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[1] These words prove that this form was not intended, when made, as a draft of the oath of 1606 itself.

1606

The Oath of Allegiance

(3 & 4 Jac. I. c. iv. sect. ix)

I, A. B. do truly and sincerely acknowledge, profess, testify and declare in my conscience before God and the world, that our sovereign lord King James is lawful and rightful King of this realm and of all other his Majesty's dominions and countries;[1] and that the Pope neither of himself nor by any authority of the Church or See of Rome or by any other means with any other hath any power or authority to depose the King, or to dispose any of his Majesty's kingdoms or dominions, *or to authorize any foreign prince to invade or annoy him or his countries,*[2] or to discharge any of his subjects of their allegiance and obedience to his Majesty, or to give license or leave to any of them to bear arms, raise tumult or offer any violence or hurt to his Majesty's royal person, state or government or to any of his Majesty's subjects within his Majesty's dominions. Also[3] I do swear from my heart that notwithstanding any declaration or sentence of excommunication or deprivation made or granted or to be made or granted by the Pope or his successors or by any authority derived or pretended to be derived from him or his see against the said King his heirs or successors, or any absolution of the said subjectes from their obedience, I will bear faith and true allegiance to his Majesty, his heirs and successors, and him or them will defend to the uttermost of my power against all conspiracies and attempts whatsoever, which shall be made against his or their persons, their crown and dignity, by reason or colour of any such sentence or declaration or otherwise, and will do my best endeavour to disclose and make known unto his Majesty, his heirs and successors, all treasons and traitorous conspiracies, which I shall know or hear of to be against him or any of them; and I do further swear that I do from my heart abhor, detest and abjure, as impious and heretical, this damnable doctrine and position, that princes which be excommunicated or deprived by the Pope may be deposed or murdered by their subjects or any other whatsoever: and I do believe and in my conscience am resolved that neither the Pope nor any person whatsoever hath power to absolve me of this oath or any part thereof, which I acknowledge by good and full authority to be lawfully ministered unto me, and do renounce all pardons and dispensations to the contrary: and all these things I do plainly and sincerely acknowledge and swear, according to these express words by me spoken and according to the plain and common sense and understanding of the same words, without any equivocation or mental evasion or secret reservation whatsoever: and I do make this recognition and acknowledgement heartily, willingly and truly, upon the true faith of a Christian: so help me God.

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[1] Here the long passage in the form of 1605, beginning "And that aswell you" to "that do examine me, is omitted.

[2] This clause was not in the form of 1605.

[3] From here all is new to "And all these things I do plainly . . ."

1606 (?)

Form Offered by the Priests as a Substitute for the Oath of Allegiance

(Tierney's *Dodd's Church History,* IV, p. cxc.)

We, the secular and regular priests and other catholics of England, swear, promise, and protest, as members of the civil and politic body of this kingdom of England, that we acknowledge our sovereign, king James, the first of that name, to be mediately after God, the head of this civil body, without any dependence on any other earthly power or jurisdiction whatsoever: and to him and to his successors we will yield all fidelity, obedience, and subjection, and will acknowledge in him an authority, power, and princely dominion as ample as ever our predecessors, priests of England, acknowledged or admitted in his majesty's royal progenitors, kings of this realm.[1]

We further make oath and declare that, neither at the time of our ordination, nor at any other time or place, did we ever bind ourselves, by any oath of obedience or submission to any foreign jurisdiction whatsoever, in virtue whereof this our oath of allegiance may be rendered null, void, or conditional, at the will of those by whom we were ordained; that they have no power to dispense with our said oath; and that we will not accept of any such pretended dispensation. We moreover swear and protest that we neither have had already nor will hereafter have, any intercourse, intelligence, or dealing, with any prince, prelate, potentate, or person, of whatever place or order, at home or abroad, under any pretext or for any cause, to the prejudice, hurt, or danger of the king's royal person, or of his realms and dominions; but that we will be always ready, with all loyalty and submission, even with the effusion of our blood, to defend, and to excite all others with whom we live to defend, our said king and his successors, as well against all foreign invasions and practices as against all domestic rebellions and conspiracies, under whatever pretext, or by whatever authority excited or contrived, against the peace of our said sovereign lord, his person, crown, and dignity, and against the peace of his realms and dominions; and we further promise that we will do this, any excommunication or other ecclesiastical censure, pronounced or to be pronounced, to the contrary notwithstanding: and we solemnly engage to teach and persuade all others, his majesty's subjects, with whom we chance to converse, to act in like manner.

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[1] This form is almost a literal translation of the Submission offered in April, 1604.

1606 (?)

Form Offered by the Priests as a Substitute for the Oath of Allegiance

(Tierney's *Dodd's Church History,* IV, cxci.)

I, A. B., as concerning my allegiance towards his majesty, do, in all points, acknowledge as dutifully, and as far forth, as any good subject ought to do to his prince: and I do truly and sincerely acknowledge, profess, and testify, and declare in my conscience, before God and the world, that our sovereign lord king James is lawful king of this realm, and of all other his dominions and countries: And that I do and will bear true faith and loyalty to his majesty, and him will defend, to the uttermost of my power, against all unlawful conspiracies and attempts, which shall be made against his person, crown, and dignity: And will also do my best endeavour to disclose and make known to his majesty all treasons and traitorous conspiracies, which I shall know and hear of, to be made against him: and I do also think and verily believe that princes, which be excommunicate, ought not to be murdered by their subjects nor any other. And all these things I do plainly express, and sincerely acknowledge and swear, according to these express words by me spoken, by the true faith of a christian.

So help me God.

II

CONSTITUTIONAL DOCUMENTS

ORDERS OF 1593

(Caius College MSS. Cambridge, 103, f. 173. Cotton MSS. Cleopatra, F, II, f. 204.)[1]

Orders agreed upon by the Archbishop of Canterburie and the Bishops of ytt Province by them, or (a) such as are under them to be observed, for the better executing of the Lawes established, and avoydinge of sundrye offence. (b)

Ministers

1. First whereas there is fault found with the number of wanderinge and insufficient mynisters. It is thought fytt that none alreadye made be admytted to any Cure hereafter without diligent examynacon of the Bishop for his Learning and without substantiall testimoniall of his good life and behavior: whereof a Recorde to be kept in the Registerie. And that none betweene this and the next Parliament be admytted to the mynistrie except he shall be a Bachelor of Arte (c) at the Least of one of the Universities of this Realme.

Mariages

2. That in (d) the fourme alreadie devised for lycences of mariage by the L: archb: it is added, That all mariages be solemnized in the parishe Church of one of the parties betweene the hower (e) of vii and xii of the clocke in the forenoone by the mynister

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[1] The reading of Cotton MSS. are given: (a) "and": (b) "offences": (c) "Artes": (d) omits "in": (e) "howres": (f) "the": (g) "other": (h) "the."

of the same Parishe. And that all other Bishops of this (f) Province shall followe the same forme.

Consent of Parents, etc.

3. It is convenient that the consent of the parents and the (g) gouernors be had in writinge of such yonge persons to be maryed, as be under the age of xxi yeares, and that allso with the consent of the Bishop of the Dioces. And if the persons to be maryed be aboue that age, it is sufficientlie provided alreadie by the Bond that is now used.

Citation Viis Et Modis

4. The Citation viis et modis not to be awarded in any cause without a primarie citation first had, and returned before. And that in causes of office, The Citation viis et modis be upon some Sondaye or Holiedaye affixed upon the doare of the parishe churche or chappell a lytle before the beginning of divine service, or at some other time upon the doare of the usual house where the partie to be cited doth dwell with his familie. The same citation, or a true copie thereof to be left there during the tyme of divine service, or some good parte thereof.

Citation ex Officio

5. And that in cases of Office, the Mynister in the time of the most frequencie of the people shall signifie publicquely, that the partie is by authoritie of such a Judge, summoned and warned to appeare, in suche place and at suche tyme, as is contayned in the same citation. And that their (h) Apparitor shall returne the said Citation endorsed with the ministers Certificate of the execution thereof. which if the mynister shall wilfullie refuse to doe, then the saide mynister to be commaunded sub poena Juris to doe it, or else to appeare forthwith before the Ordinarie.

Excommunication

6. That at the tyme of the denunciation of any excommunication, warninge be geven publiquelie by the Minister, that all men

doe abstayne from the companie of such excommunicate person, under payne of excommunication themselves.

Table of Fees

7. That the Table conteyninge the particular fees of euery office, be placed in the Consistorie, and Registerie in suche sort, as every suiter maye convenientlie viewe and reade the same. And that euerye Bishopp geve Streite charge to suche as are under him not to take any other ffees then are sett down in the saide Table.

Orders and Lycences

8. That Ordenaries take carefull heede in orderinge deacons and Mynisters, and in admytting to benefices and in lycencinge to preach or teache suche persons onelie as shall geve good declaracon of theire conformitie and consent to the Religion and orders of the Church of England nowe established.

Absolution of the Poore ex Officio

9. That in matters of mere office for th' avoydinge of the offence that is conceyved by the multitude of poore persons formerly excommunicated, it may be observed by euery ordinarie and Judge ecclesiastical exercysing Jurisdiction, that suche poore persons as nowe stand excommunicated and shalbe certyfied by the minister, Churchwardens and Sydemen of any particular parishe to be unable through pouertie to paye theire fees, and which shall shewe theire conformitie in appearinge or satisfyinge the order of the Courte (for breache whereof they stand excommunicate) shalbe absolued with out payinge any fees.

A NOTE OF DIVERSE THINGES CONSIDERABLE ABOUT THE EXECUTION OF THE LATE CANONS, ETC.

(Cotton MSS. Cleopatra, F, II, f. 201.)

I

About thadmitting of ministers. Cap. I.

(1) The Church is greved with manie wanderinge and insufficient Ministers, therefore it is requisite that more care be had of the canon in that behalf.

(2) It is thought meet that accordinge to the Canon the names and qualities of all the ministers ordeyned or instituted be everie yeare dulie transmitted to the Archbushopp, and therewithall a note of their subscriptions to the Articles under the Bishopps hand.
(3) Item that the booke of ordination of ministers be duelie obserued and namelie in the presentinge and examininge of the parties to be ordeyned by the Archdeacons or their deputies, which is omitted in manie places, and maye breed some inconvenience to the parties ordayned.

II

Commutation of penaunce. Cap. II

It is thought that the order for commutation is not dulie obserued in diverse places.

III

Licenses to Marrie. Cap. III

(1) It is wished that one forme of condition be nowe agreed upon and obserued in all bondes for marriages without Bannes, accordinge to the Cautions sett downe in the Canon and that these wordes, publice ac tempestiue in facie ecclie may be interpreted (in the Church at the usual tyme of divine service.
(2) Item. That great care be had of the surties, that they be able, honest and knowen sufficient men.
(3) Item that noe license be graunted to anie child or servant without the expresse consent first had of the maisters, parentes or gouernors in writing, sufficientlie testified, under their and the ministers hand of the parishe.

IV

Excommunication. Cap. IV

(1) ffor amendment of hastie excommunication, It is wished that the course of lawe be dulie obserued in the execution of the processe, viz. ffirst that noe Citacon vijs et modis, be awarded unlesse a primarie hath gone before, and that the Apparitor doe make fayth before the Judges in open Court, that he hath faythfullie and diligentlie sought the partie.
(2) Item, that the Citation (vijs et modis) be solemlie affixed

upon the dore of the parishe churche or Chapell where the parties dwelling or most usuall aboade is, duringe all the tyme of morneinge or eveninge prayer, upon some sundaye or holliedaye.

(3) Item that the minister in the tyme of the most frequence of the people there, shall signifie publiquelie, that the partie is by aucthoritie of such a Judge sommoned and warned to appear in such a place and at such a tyme as is conteyned in the said Citacon upon paine, etc. And the Apparitor shall returne the said Citacon indorsed with the ministers certificate of the execution thereof in forme aforesaid.

(4) Item. it is to be considered, whether it be not also meete, that the Iudge doe expect some one court daye after the returne of this Certificate, before he doe excommunicate the partie for not appearinge.

(5) ffor avoydinge of the offence that groweth by the multitude of poore persons, that now stand excommunicated beinge not able to paye the fees, ye may please your LLs: to consider,[1] whether it be not meete to take order ymediatelie after the ende of this Parliament, that such as by certificate of the ministers, Church-wardens and sidemen are found to be soe poore, as that they doe lyve upon the releefe of the parishe, and stand excommunicate onelie for not appearinge, or not payeinge fees, shall upon such certificate and their apparance be forthwith absolued without anie fees payeinge. And yf they stand excommunicate for not doeinge penaunce, or not satisfyinge the order of the Judge, then in case they shall doe their penaunce, and satisfie the order, and certifie the same ymediately upon such certificate they shalbe absolued without anie fees.

(6) Item that yf anie such persons doe hereafter thorough their wilfull obstinacie deserue to be excommunicated warninge be geuen publiquelie by the minister at the denunciation of their excommunication, that all men doe absteyne from their companie, (sub pena Iuris) that thereby they maye be kept in better obedience.

(7) Item yt is thought consonant to the Canon and reason that the minister to be associated with the laye Judge, for pronoun-

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[1] This may be a petition or list of suggestions drawn up by the Lower House of Convocation, or possibly a report of a committee of bishops to the House of Bishops.

cinge of excommunication ought to be a verie grave and lerned man aucthorized by Commission to sitt as assistant with the Judge, whereby he might be acquainted with the merites of the cause before he pronounce the sentence and not to haue the same deliuered over the Judges shoulder to be pronounced behind his backe.

V

Pluralities. Cap. V

Concerninge pluralities of benefices, it is to be wished that anie publique preacher licensed, (though under the degree of a Master of Art) maye be permitted to hold two benefices, beinge under value and within compasse of myles.

VI

ffees. Cap. VI

It is complained that the fees of orderinge ministers, of licenses to preach, and of Institutions are grown verie excessive and scandalous in diverse places. It is thought that farmeinge of Iurisdiction is cause of excessive fees.

Item. in other matters the table of fees is either not sett upp at all or soe sett, as men cannot easilie read them.

It is generalie desired that none be ordered deacon or minister, or admitted to anie cure or benefice, or licensed to preache or to teache anie schollers publiquelie or privatlie, unlesse he doe first subscribe and take the oath of the supremacie.

Item it is to be considered, whether it be not needfull for the necessarie supplie of Peticannons in Cathedrall and Collegiat Churches to admitt some singinge men of honest conversation and tollerable knowledge in the Scriptures unto the Ministerie, though they understand not the lattin tongue, tyinge them by bond or otherwise to the servinge in those churches for the which they are first ordeyned.

Item. yt may please your Lordshippes to haue care that none be licensed preachers inhabled to receyve benefices of XXX£ but such as ar maisters of art of fowre yeares of standing at the least or have byn preachers publiquely Licensed for 4 yeares before.

III

THE HAMPTON COURT CONFERENCE

THE BISHOPPS PROCEEDINGS AND OPINIONS TOWCHING THOSE THINGS WHICH WERE COMITTED TO THEIRE CONSIDERACON

(Additional MSS. 28571, f. 187-192.)

The three first points concerninge explanations of some thinges in the Common booke are already finished.

The fourth which towcheth the translation of the Bible hath not as yett ben dealt in.

The fifthe was sett downe by the LL. in these wordes: consideration to be had what nomber of ministers there are: where placed: howe qualified: and howe provided for already: to the intent that better provision may be where they are wantinge and further cure taken for those which haue not competente mayntenaunce.

ffor the first and second point (sic) of this proposition, viz: the nomber of ministers and the places where they remayne, there are as many mynisters as there are parishes in England, besides those which remayne in bothe Universityes: which serve cures under other Ministers, and which remayne in divers noblemen and gentlemens houses: the nomber whereof is greate but the certainty of it as yett is not knowne.

Touchinge theire qualities and how they are provided for; very many are Preachers and many are no Preachers. Many beinge no Preachers haue ecclesiasticall liuings and many that are preachers doe want; viz: suche as remayne in the Universities, serve cures under other ministers and remayne in noble and gentlemens houses.

ffor those parishes where the Incumbents are no preachers these may be the remedies. I° that as muche may be allotted out of the livinge towards the mayntenance of a preacher as the incumbent may any wayes spare so as he may live, the rest is to be supplyed by the parishe. 2° that after the said Incumbentes deathe who is no Preacher: it may not be lawfull for any BB to admitt any into it who is not a Preacher. 3° whereas partly upon necessitie and partly through oversight divers insufficient persons haue heretofore ben made ministers: it woulde nowe be provided for that when any insufficient minister either for his learninge or conversation shoulde be presented to a benefice: it may be lawfull for the B. to reiect him and vppon any Quare impedit brought the Bs. certificate thereof to the Judges may suffice without further triall by any course at the temporall lawe.

But the cheifest drifts which this Consultacon aymeth att is: how every parishe may afforde a competent mayntenance for a Preacher. ffor that once effected in shorte tyme there would be able ministers almost for every parishe in England. These meanes therefore are offered to be Considered of for that purpose.

1° There are many Personages and vicaredges in Englande now scarce able to finde a Reader, which would afforde a competent livinge for a Preacher, if it might be provided for by Acte of Parliament that all Vicars and persons havinge benefices with cure of soules might haue the tithes payed unto them in kinde accordinge to the auncient ecclesiasticall constitutions of the churche, notwithstanding any custome priviledge or composition to the contrary.

2° If some small vicaredges and personages notwithstandinge the said paymentes of tithes in kinde, shoulde not be able to manteyne a Preacher, then one or two of the small benefices next adioyninge and livinge fitt for that purpose might be conioyned into one.

3° In cities and Towneshipps where there are no prædiall tithes att all or litle, and where in auncient tymes the Priestes livinge did rise uppon offerings, oblations, and personal or priuie tithes which nowe are utterly decayed: it would be provided by an acte of Parliament that tithes in suche places should be payd accordinge to the house rents of the Inhabitants, as it is in London. And that where in suche cities or Towneshipps there are divers litle parishes which are not able every one of them to maynteyne a Preacher, notwithstandinge they had tithes payed unto them accordinge to the manner of London: there two or three might likewise be ioyned together to make one parishe.

4° Where the personages are impropriate, there the Cure is discharged either by a Vicar or by a stipendary. The Vicars are mainteyned with suche tythes only as were allotted unto them by composition when the Personages were first impropriate which in many places notwithstandinge they should be payed in kinde, woulde not be able to maynteyne a Preacher. But where the Cure is served by a stipendary, his mayntenance is commonly much worse. In which cases and where there can be no convenient unyon of divers livinges in one as aforesaid, these wantes would be supplied and remedied if the B: of the diocese might have authoritie by acte of Parliament to allot to every suche vicar or stipendary congruam portionem out of the impropriations and all other personages that have vicaridges indowed.

5° In Lancashire and in the shires adioyninge there are many personages of very large extent which haue divers chappells under them: whereunto as many househoulders doe apperteyne as to the most parishes in England southward. These personages all of them almoste are impropriate. So as here it were meet, that the said chappells were made of themselves several parishes: or ells as before the allowance for Preachers in those places must be allotted out of the Impropriations which are indeed of greate yearely worth.

6° If all the Benefices with cure in England were divided in 6 partes, 5 of them and more are of lay men's patronages whereby many of the said Benefices are made unable through the Patrons greediness to mainteyne a Preacher in any honest sorte. ffor remedy whereof there would be a more severe statute made against symonye.

Concerning the 6° proposition there are in it two generall partes. 1° with what causes the Bishops and theire Chauncellors, Commissaries and Officialls shall deale? for answere whereunto there is some uncertayntie as of late they haue bene impugned by Prohibitions. Otherwise the answere would in tymes past have been directe viz that all causes are of ecclesiasticall cognizance which are not to be reformed by any originall writt att the comon lawe.

The 2 generall point is concerning order to be taken for the proceedinge of Chauncellors and other ecclesiasticall officers in the said causes: that thereby certayne supposed abuses may be reformed. These remedies followinge will meete with those enormityes that are complayned of.

1° That Bishops may not sell theire office whereby he that buyeth in grosse as it was obiected must be compelled to sell by retayle.

2° That no Chauncellor, Archdeacon, Comissary or Officiall shall interteyne any criminall causes but vpon presentment or iudiciall accusation where there is a partie: unlesse in causes of greater importance which no man will present, and yett are necessary for the comon good to be punished; the B. shall license them under his hande to procede in them ex officio.

3° That presentments be not urged above once or twice in the yeare.

4° That neither Chauncellor, Comissary or officiall shall keepe aboue viij courtes in the yeare for causes criminall.

5° That all ecclesiasticall Judges, Registers and other officers belonginge to theire Courtes: shall be tyed to the ancient fees used to be paied 20 or 30 yeares since.

6° That all Chauncellors, Commissaries, and officialls may be sworne to deale uprightly in their proceedings and without corruption.

The 7th proposition or resolution is satisfied towchinge the writinge of letters into Lancashire.

The 8th point hathe not ben yett dealt in towchinge the Comission for causes ecclesiasticall: sondry of his Maiesty's Councill beinge appointed to ioyne togeather with the Bishopps for the expeditinge of it.

As towchinge the 9th proposition: there beinge also divers of his Maiestys Councell as well as Bishops appointed to deale in it: the same hathe not as yett ben resolved uppon. Only the late lo: Archebusshop of Canterb: and some other Bishopps had concluded to haue offered the proiect followinge to theire LL. consideration.

ffirst it was thought meete to be propounded whether the ecclesiasticall Iudges might not haue authoritie to impose for contumacy a mulct to the Kinges use, or to imprison, and that those coertions should be executed by the said Iudges and theire officers as in the Kinges ecclesiasticall Courte of Comission, the Admirall court and court of Delegates, for admirall causes, and not be driven to seeke after execution of theire decrees and sentences by processe owt of the temporall Courte as the Chauncery or otherwise, with greate delay and expences. If this be not thought convenient then as followeth.

The ecclesiasticall Judge uppon the citation executed and returned conteyning the offence of the partie shall preceede first by suspension and uppon 20 daies. contumacye and contempt of the said censure and denuntiation thereof (beinge also in effect a second citation) then to proceede to excommunication and not before. And that no man be suspended or excommunicated upon a formall certificate by a Proctor, but that there be an affidavit made of the due servinge of the processe. Also the said ecclesiasticall Judge decreeinge an excommunication as aforesaid the same shall be executed by a grave minister who by a former canon is to assiste the Judge for that purpose. Provided that in such cases as concerned Ministers, the ecclesiasticall Judge shall neither suspende, excommunicate nor deprive any of them but with the assistance of 2 grave and learned preachers att the least. And in greater and more greevous crimes where the Bishopp then in person shall sitt as Iudge, he shall be assisted in the said censures for the greater solemnitie of the Action with the Deane and some of the Prebendaries or with 3 or 4 suche grave preachers as the Bishopp shall thinke fitt to call unto him in that behalfe.

AN ANONYMOUS ACCOUNT IN FAVOUR OF THE BISHOPS HAMPTON COURT CONFERENCE

(Baker MSS. M. m. 1. 45, f. 155-157.)

Anno Domini, 1603. Acts Ecclesiastical in the pryvi Chamber.

The Conference began upon the xvith daye of January at xi and continued untill v of the clocke. none suffered to be present but the Counsaile and suche as were Agents thereunto summoned. The Kinge maid a speache unto them, wherein he signified his desire to establishe truthe of Religion. And forasmuch as they (speaking of the Puritans) had excepted against the present State of Religion and Church Discipline as erroneous and imperfect, he was desirous to heare the objections that yf they were approved and allowed to be just and equall, they might be reformed accordingly.

Wherupon Dr. Reynolds as the mowthe of the rest answered the Kinges speache, and excepted against many points, which he deryved from these generall heads. (1) Articles of Religion. (2) Subscription to the Articles and Booke of Common Prayer. (3) Sufficiencie and Residencie of the Ministrie. (4) Iurisdicion of the Bishoppes and Chauncellours. In the Articles he made exception and a contradicon between the Article of Predestinacon: and fallinge from faithe, affirminge th'one to overthrow th'other. The second against the Article of Sacraments, because that our Churche renounceth confirmacon and yet the Booke of Common Prayer alloweth yt.

To the first Dr. Overall craved audience, and replied as a partie particularly aymed at therin. The Kinge graunted him verie willingly licentiam loquendi, and was fully satisfied by him, advysyinge in the conclusion, that this additon mighte be putt to the Article, that the Elect might often fall from grace and faithe.

To the second the Bishop of Winchester and London answered, that confirmacon was rejected as a Sacrament, and in the prayer Booke allowed as a holy and godly practice of the Apostles in the primitive Churche.

After that he made some exception against the Translation of our Bible and the readinge of the Apocrypha, the former was a little debated, and so passed over as a matter of no great moment: and yet the Kinge content to allowe some newe Translation, yf the Bishoppes would consent thereunto. As for the Apocrypha he allowed and iustified the use thereof.

The second maine and generall point of subscription the Kinge did utterly reiect, and would no waye yeld to their request, to be freed from subscription. Here were handled all matters of Controuersie, as Cappes, surplice, Ringes, and Crosses, and after much opposition and Replies, the Kinge made a peremptorie conclusion, for the allowance and continuance of all these particulars as decent and expedient. Mr. Knewstubbes was fierce ageinst and so was Dr. Andrewes as feirce for the Crosse, and the Kinge most resolute for yt.

They made a Peticon: to be exempted from the superstitious surplice in regard to the weaknes of many consciences which therby were dryven from their function: but the Kinge replied with derision of their allegacon, and sayd that those weake consciences were such as ought to strengthen others, and in all matters of faction shewed themselves most headstronge, proude and violent.

The third point was judged impossible, because ther were not Ministers sufficient to furnishe everie parishe: nor everie parishe able to finde a sufficient minister: and so that point was passed over.

For ther last point of Jurisdicon: there desire was that they Bishopps should not execute yt alone by themselves, but joyntly with the Presbiterie of their Brethren the Pastors and Ministers of the Churche. Wherunto the Kinge replied merily sayeinge he would have the Presbitery buried in silence for these 7 yeares, and yf then he grewe idle, lasie, fatt and pursie, I will sett up Presbitery (saith he) to exercise my body and my patience, otherwise yt shall never up for me, and so rest contented for that matter.

This is the Truthe and nothinge but the truthe, yf anie contradict this, you maie resist hym. They had a could pull of yt and are utterly foyled. They are greived at nothinge so muche, as the continuance of a Popishe Relique of the Surplice.

It is thought they sewe for connivencie in yt behalfe, and rather loose theyr lyvinges, then weare yt, God graunt yt.

Puritan Actors in thes Pointes.
- Dr. Reynolds. Oxon. the principall mouthe and speaker.
- Dr. Sparke. spake verie sparingly.
- Mr. Chaderton. mute as any Fyshe.
- Knewstubbes feirce against the Crosse.
- Patrick Galloway. silent in all thinges.

Anti Puritans
- Dr. Andrewes
- Overall
- Edes
- Thomson
- Barloe
- Kinges
- Montaine
- Ravis
- Abbotts

Supervisors of this Conference
- Bishop of London
- of Winchester
- Bancrofte
- Billson

Dr. Feythe (Feilde) went in with the Puritans, he never spake but once, and that altogether ageinst them.

Furthermore Chaderton must conforme, and his irregular colledge to weare the surplice, and receive the communion kneelinge or els be putt owt of yt. The Kinge imposed this by reason of Information, gyven him from the Lord Henry.

The Chancellors of both the Universities must send their letters downe, that none shall be admitted without subscription.

This is the Triumphe they so longe expected.

Dr. Reynolds and his brethren are utterly condempned for silly men.

PURITAN ACCOUNTS OF THE HAMPTON COURT CONFERENCE

I

Letter of January 15, 1603.

(Barlow, *Summe and Substance of the Conference* at end of the Edition of 1604.)

Sir:—I cannot conceale from you, the good successe, which it hath pleased God to sende us, by the Conference, which his Maiestie had with the Bishops at the court. There appeared none but the Bishops which were with the King aboue three houres: Can. Lon. Win. fell downe on their knees, and desired, that all things might remaine, least the Papists should think we haue bene in an error. The King replied, that in 42 yeares corruptions might creep in. He spake of confirmation, priuate Baptisme, the Crosse, dumbe Ministerie, non residence, the Courtes; which he promised to amend; especially he spake bitterly against priuate Baptisme; sayinge hee had as liue an Ape as a woman should Baptise his childe, and againste Courtes which hee saide he would put downe. The Lo: chiefe Iustice, and the Lo: Cecil, against Excommunications by Laymen. Maister Deane of the Chappell, speaking something to the King in his eare, the Bishop of London, insolently said unto him, Doctor Montague speake out, that we may heare you, and seeke not to crosse us. At their departure, they said, that if the King should use the Ministers in such sort as they were used, they would be too insolent. The King said they were his subiectes, and if hee would not heare them, then they had iust cause to complayne. The Bishops brought foorth many Popish arguments which the King very ernestly answered, and learnedly, more then tenne times calling them Popish arguments, and saide by those reasons, they might prooue Popery. The Bishop of Winchester saide, that if he tooke away priuate Baptisme, he ouerthrew all antiquitie. The Bishop of Peterbrough brought a foolish argument, with much disgrace to himselfe. The Bishops haue taken Wednesday to consider the Kings speech. The Ministers come to the King on Munday at nine of the clocke. Honest People about the Court are comforted. Conformitans hang down their heads, and the bishops men curse the Puritanes. Sic. explicit: l. dies.

II

I haue sent you the declaration of the Conference which was in this manner: The firste day the Bishoppes mette before his Maiestie: Bishops of Canterburie, London and Winchester, making earnest sute, that all things might stand as they did, least the Papists should take offence, who might say, we would perswade them to come to a church hauing errors in it: and the Puritans will say, they haue bin persecuted long: The King answered, that the best state would gather corruptions, and that it was no argument for them, to say, they would not be cured of the pox because they had had it 30 yeares: he concluded against absolution, confirmation, priuate Baptisme, the dumbe and scandalous Ministers: pluralities, the Courtes, and the authoritie of Bishoppes by the high Commissioners, etc. The second day the Ministers were conuented before the King, who answered fearefully and modestly. The Bishop of London behaved himselfe insolently, sayinge these are Cartwrightes schollers, scismatikes, breakers of your Maiesties lawes; you may know them by their Turkie gownes, and silke Grogorum: the third day they met all: where the King spake much to unitie, that they might ioyne against the Papists: All the three dayes the King behaued himselfe admirable to the beholders, graunting to the Ministers their earnest request, that the Ceremonies of the Crosse in Baptisme, and the Surplisses, reuerent for antiquitie, should not be urged upon the consciences of the Ministers, so that they were peaceable men, and that they should haue time to consider of them; many hundreds being resolued rather to haue lost their places, then to haue yeelded to those superstitions, against which they had Preached. The last day, the Bishop of Cant: was intreated, to be a meanes that the ceremonies might not be pressed: but he answered they had bene urged as necessary, and should be so still. But it pleased God to moue his Maiestie to a more peaceable course: the Bishop of Peterborow came in with his argument about Baptisme, which the King made voide to his great reproach: The King saide many times that the Bishoppes reasons were popish, and that they might establish Poperie by them: it is thought that the King will be shortly in Huntingdonshire. The Lord Chancellor, the Lord Cecil, the Lord Chiefe Iustice, and the Atturnie Generall, must set downe some course for the high Commission and the Spirituall Courts.

III

Some of the speeches that are bruited upon or after Maister Doctor Reynolds returne to Oxon. concerning the late conference before his Maiestie:

I That the Kinges Maiestie did gratifie Maister Doctor Reynolds in euery thing which he proposed: or that Doctor Reynolds obtained and preuailed in euerie thing he did desire.

II That if anie man reporte the contrarie, hee doth lye: or that they should giue him the lye, from Maister Doctor Reynolds.

III That these thinges now obtained by the reformers were but the beginning of reformation: the greater matters were yet to come.

IV That my Lord of Winton stoode mute: and said little or nothing.

V That my Lord of London called Doctor Reynolds schismatick indeede: (he thankes him for it) but otherwise said little to purpose.

VI That the Kinges Maiestie used the Bishops with very hard words: but imbraced Maister Doctor Reynolds, and used most kind speeches to him.

VII That my Lo: of Canterbury or my Lo: of London, falling on his knees, besought his Maiestie to take their cause unto his owne handes, and to make some good end of it: such as might stand with their credite.

IV

(Harleian MSS. 828, f. 32.)

A declaration of the conference had before the kings most excellent Majesty and diuers of his most honorable priuie counsell, to wit:

The Lord Chancellor, the Eearle of Nottinhame, the Earle of Deuonshire, the Lord Treasurer, the Lo: Chamberlin, the Lo: Cecill, the Lo: Worcester, Lo: Northampton, the Lo: Chiefe Justice at Kingston (sic) between the ArchBp of Canterbury, B. of London, B. of Winchester, Bishop of Durham, B. of Carlisle, B. of St. Dauies, B. of Chichester, B. of Peterborough, B. of Worcester, B. of Bristowe, with the Deanes of Paules, Westminster, Winsor, Worcester, Winchester, Chester, Christchurch, Sarum, of the Chappell, one the one side, and Doctor Sparkes, Doc. Reynolds, Doctor ffielde, Mr. Chadderton, Mr. Knewstubbes on the other side.

Upon thursday the xij of January, 1603, (being the appoynted day of the conference) Came before kinges Majesty at Hampton Court the B. B. abouesayde, at which time his Majesty charged them, as they woold answer at the last day, that they shoold deliuer upon the Saturday following what they thought in their consciences was needfull to be reformed in the churche of God. On Saturday followinge the Bishops being before the King in the privy Chamber, the King's Majesty declared the purpose for which he had called them thither, as is aboue noted. The BBs of Canterbury, London, and Winchester fell down upon their knees, and humbly beseeched his Majesty yt there might not be any alteration of any thing before prescribed and used in the gouernement of the Church and deuine seruice of god in England, alleadging these reasons, first for yt the papists woold take offence that they had bene 40 yeares and more compelled to come to the Churche and to submit themselues to the Religion therein used, and now the same to be argued of insufficiency and corruption by this alteration, 2ly for yt the Puritans being also inforced to conformity and subscription thereunto, woold say yt they had ben uniustly persecuted all this while, in that they had ben compelled to yeld to that which now might appeare not to be warrantable. Whereunto the King answered that there was no state either Ecclesiasticall or Ciuill whereunto in 40 yeares some corruptions might not creepe, and that it was no reason that because a man had ben sick of the pope 40 yeares, therefore he shoold not be cured at length. And so proceeding to the corruptions in the Comunion booke, Priuate Baptisme of women was first brought in question, which the Bishops affirmed, not to be allowed and tollerated by the booke, whereupon the booke was sent for, and upon consideration thereof had, the Lordes of the Counsell shewed their opinions that it was allowed and tollerated by the booke. And thereupon his Majesty thought it meete that it shoold be utterly remoued out of the booke, affirminge he had as lieue his childe were baptised by an Ape as by a woman. But the Bishops then tooke upon them to manteyne it by alleadginge that if it shoold not be alloued of, then all antiquity woold be utterly ouerthrowen. Whereunto his Majesty answered that as well might they by color of antiquity bring in prayer for the dead. And his Majesty then appealed to Mounser Gourden (a man well read in auncient writers) affirming that he was able to produce many places (especially in Augustine) agaynst the Baptisme of priuate men and women which being disavowed by the Bishops, Mounser Gourden declared that he had shewed to Mr. Doctor Mountegue 10 places at the least prouing the same and then the doctor submissely speaking to the King, the Bishop of London sayd, Speake out, Mr. Doctor, and do not crosse us, underhand. And then the Doctor openly acknowledged the same. Amongest the rest the Bishop of Peterborough alleadged out of the Ecclesiasticall writers that an ancient father in case of necessity Baptised with sand instead of water. Whereto his Majesty answered pleasantly. A turd for the Argument. he might as well haue pissed on them, for that had been more liker to water than sand, And in fine his Majesty noted they were there more iniuriouse to the poore infants then the papists, for that the papists to relieue the inconuenience ensuinge upon their opinion of the necessity of Baptisme to saluation had prouided a Limbus for the infants that departe unbaptised, but they (the Bishops) had no prouision for them but hell that he coold see. So two houres were spent before the Bishops woold yeeld that it was to be amended. At the last, it was concluded that none shoold baptise but ministers, and that if the fathers did require it in time of danger of death the ministers shoold come home and baptise their children; And then were concluded many of the rest of the matters contayned in the articles, amongst which the Bishops alleadginge for non-residence and plurality of benefices the needfull seruice of Noblemens Chaplains, the King answered that noblemen shoold keepe euery one a Chaplin in his house without hauing many benefices.

And in matter of discipline the King sayde that it was no reason that the Chancellors shoold hold any iurisdiction ouer Ministers or excommunication any way. To the which the Lord Cecill spake verie earnestly and pertinently, and so did the Lord Chancelor, and the Lord Chiefe Justice, adding that Registers places are often solde for 500£ which they must gather up by prowling (?). To which the Bishops answered that they found the Registers places graunted by Patent before their time so that they (the Bishops) were slaues to them and woold be glad that order might be taken with them. And the King farther speaking of the ministery in Irelande he sayd that without conscience of obeinge he held them but as slaues, which upon euery occasion woold be ready to rebell. And after 4 houres conference the Bishops made petition that the King woold not heare the ministers agaynst them in this conference. To which the King answered that they were his subiectes, and if he shoold refuse to hear them, they might iustly giue out agaynst him that he was an uniust King, Then the Lo Chancellor called for Doctor Reynolds and those that were seekers of reformation, and appoynted them to attend there on Munday. At which time the ministers and the Bishops of London and Winchester and the Deanes of Westminster, and Paules, and Chester being before the King's Majesty, he declared his present intendment, and required them to shew what matters there were amisse in the Churche which they required to be reformed, that all causes of disorder being remoued, thei might ioyne together agaynst the comon adduersary.

Whereupon Doctor Reynolds declared 4 principall grieuances which they craued to be reformed. The first, concerninge the purity of Doctrine, wherein he propounded first the defects of the book of Articles. But the Bishop of London first interrupting him, sayd of them that they were Schismatickes, and the maintayners of all the Schismatickes in the land, and alleadged many places of Counsels out of his note booke that such were not to be heard agaynst a Bishop adding that they greatly abused his Majestys patience in coming before him in their Turky gounes, more likely to conforme themselues to Turks, then to the orders of our Churche, as Thomas Cartwrite had taught them to doe, whose scholler thei shewed themselues to be. Whereto Doctor Reynolds gaue litle answer but that in the university they went in such gounes as their orders there required, but abroad they might use such facion of gounes as beseemed their callinge. Whereto the Bishops replied that by the orders of our church they shoold haue worne priestes gounes with tippets, and not those trunck gounes; adding that they were under his Majesty's power, and might iustly be punished therfore, if his Majesty's clemency were not the more. Whereupon his Majesty sayde to the Bishop. My Lord, you are too hote in the beginninge, and within a while after, now my Lo: yow are more charitable. Then his Majesty requiring of Doctor Reynolds what he found in the Articles contrary to the puritye of doctrine, he declared that in the Article 13 (?) it is there sayd that the Baptised may fall from grace, and comit sin, which he sayd he thought not to be eull meant, but that the baptised might so fall from grace, that they might sin, but absolutely to fall from grace, he thought that any receaued to grace, coold not, And further he moued that for the avoydinge of the errors of general grace, which of late haue bin moued in our churche, the 9 articles concluded upon in a conference before the L: Archbishop of Canterbury about a year agoe might be added to the booke of Articles, where Mr. Doctor Overall dean of Paules on his knee moued his Majesty that he might speake, and so permitted, sayd that that motion was intend agaynst him, for that he had taught that those that haue bin receaued to grace may fall from grace, and if they do not repent they shall perish. But his Majesty there interposed, and said, the electe indeede might fall, but neuer finally, so that they can perish, for they shall rise agayn by repentance, and so cut of that difference. Onely the Bishop of London insisted, that the 9 articles might not be added to the reste, for that the booke thereby woold be made too great: and the King's Majesty seemed to agree to him, as conceauing they had spoken of the comunion booke which he sayd was bigg ynoughe already which Doctor Reynolds perceyuing, told his Majesty that he ment the booke of Articles, which being but small, the 9 Articles might well be added. And then his Majesty understanding what booke they spake of ended the strife and sayd it might be considered of. Then explication was further required in an other Article, wherein it is sayd that in the congregation none but ministers shoold minister Sacramentes where by (sayd Doctor Reynolds) it may be aplied that others may baptise out of the congregation. And the like was noted of the 37 Article, wherein it being sayd that the Pope hath no power in the Realme of Englande, he required that it might be added (nor ought to haue) And both those (as not so much materiall) were left to further consideration.

Secondly, amongst those things which concerne purity of doctrine, he wished that the translation might be reformed, and one to stand as warranted for all. And there he shewed some corruptions, namly in the 4 ca: Galla. v. 5 where it is translated Sina bordereth upon Jerusalem, (for) answereth unto: and the like in the Psal. 105. They were not obedient (instead of) disobedient. And in the 106 Psal: v. 30 Phineas stood up and prayed (for) he executed judgment. Then the King freely gaue assent that there shoold be one translation of the Bible consonant to the originall Greeke and Hebrew and set forth without note, for that some of them enforce a sence further then the texte will beare. For where it is sayd that Asa deposed his mother Maacha; some haue it in the margent, that he shold rather haue put her to death, and accordingly, (sayd his Majesty) some in Scotland upon that ground woold haue had him in such sort to haue proceeded agaynst his grandmother which he liked not of. Then 3lie amongst those things which appertain to puritie of doctrine, Doctor Reynolds moued that there might be a more perfecte Chatechisme, made for the instruction of all sorts, aswell in the misteries of the Lordes supper, as of Baptisme, and all other things needefull, whereunto it was readyly yelded. Fourthly, as appertayning to the preseruation of the purity of doctrine, he also moued that popish books, might not be brought into the land, and so freely bought and sold, as they were to the corruption of many. Whereto his Majesty in answer sayd, that if he meant the 14 Quodlibetairan bookes, he was to understand that they were written by suffrance of the Councell of state; to this ende that when the Jesuits imbusied themselues to set on fote the Spanish title in England, the seminaries were stirred up to crosse them. But Doctor Reynolds signified to his Majesty that he meant (not) those bookes, but such as Stella and other Friars bookes, which manie yong men bought up before better bookes, and not descerning rightly of thier corruptions, made use of somethings that were not sound. Where my Lo: Cecill made good that which D. Reynolds had sayd, affirming that he was informed that more books were bought up of that kind then of the writings of the soundest men, and wished that such might be inhibited. Whereunto his Majesty did condescend and further gaue order that if any such were brought ouer they shoold be solde to none but such as shoold be allowed to haue them to good use to confute the aduersary.

Then followed the 2 generall poynt propounded by D. Reynolds touching the ministery, that such might be ordayned thereto as were able to instructe the people, and were unblameable life, and the contrary remoued: and nonresidence and pluralytie of benefices reformed. Whereto the Kings Majesty answered. that the former day he had dealt with the Bishops concerninge the same, and that he meant that these that were unable for the ministerye and had long liued therein, shoold be charitably prouided for, and other appoynted to preache in theyr roome: but the scandalous forthwith to be remoued from the ministery, and learned and well qualified men to be placed for them in all haste, and those that are of best gifts and knowledge transposed to the places popishly giuen, and where most recusants are; and able men for the worke of the ministery hereafter to be taken into the ministery, and that the non residents shall be called home to feede their flockes, Sabathely, and that dubble beneficed be resident upon one of their benefices, and keepe a preacher upon the other and not to haue them far asunder, but that if they preach this Sabbath at one of their cures, they may be able to preach at the other the next Sabbath, and if they be further distant asunder that they mayntayn one qualified to preach, and of that sorte to be as few as may be. Here the Bishop of London seking to stoppe the good motions of D. Reynolds, on his knee moued his Majesty that the ministers may be bound to say all the appoynted prayers, adding that it was nedfull we had aswell praying as preaching ministers. Whereto the King answered, ministers must be preachers els how can the people learne to pray, secondly he moued his Majesty woold appoynt more homilies to be made in the churche. Whereto sayd the King's Majesty we meane to plante preachers.

And when it was moued by D. Reynolds that the ministers might not be hardly and uncharitably dealt with all by the Chancellors and comissaries, and other officials, his Majesty sayd that they shoold haue nothing to doe with the ministers, but they shoold be subiect to their Bishops to deale with them, with the assistance of the Deanes, and other of the grauest ministers.

Then Doctor Reynolds proceeded to the 3 generall poynt touching the comunion Booke. Wherein he hauing propounded the Baptisme of women, his Majesty told him what he and the Bishops before had concluded upon touching the same, And so the Doctor proceeded to the readinge of Apocryphall Scripture, which the King sayd he saw no reason but that they might be read ad informationem morum, though not ad edificationem fidei, as of ancient time hath ben done in the Churche: Whereupon Doctor Reynolds alleadged that there were sundry errors therein contrary to the Cannonicall Scripture. And so he propounded one or two places which he sett downe to the Bishops of the which after that his Majesty had very learnedly argued, he yelded that all such parts as had errors shoold be taken out, and others of them more sound read, which may best serue for explanation of Scripture and instruction to good life. And so his Majesty appoynted Doctor Reynolds to giue up to the Bishops a note of the erronious places.

And then Doctor Reynolds proceeded to the confirmation of children, which he thought to haue no sufficient warrante of Scripture nor profitable use and hereupon some of the Bishops tried to drawe it from the Apostolique imposition of hands in the miraculous gifte of the Holy Ghost, the King gaue not approvall thereunto, and then they alleadged the 6 cap of the Hebrewes verse 2 where after the speech of chatechising there is mentioned of the doctrines of imposition of handes, as subsequent in practice thereunto. But the Doctor shoewed that it might be more probably be understood of imposition in confering the gifts of the holy ghost or in the ordination of ministers, both which it was requisite for the people to know, rather then any such matter as Chatechising, whereof we haue otherwise no proofe. And then his Majesty required Doctor Reynolds to shew how he woold haue it reformed, he answered that it might well be refered to the seuerall pastors, by whom they are chatecized, to examine and aproue of their fayth, and fitness to proceede further to the communicatinge the supper of the lord. But the King's Majesty here affirmed that he smelt whereunto that tended, to make euery one in his cure to be Bishop which he liked not of, but sayd he woold haue the pastors of euery place to chatechise them. But the Bishops shoold haue the triall and approuall of them. And so he woold haue the Confirmation to be termed an examination of the childrens fayth.

And from thence they proceeded to the ceremonies of the surplice and signe of the Crosse in Baptisme, both which the King thought might be ordayned by the Magistrate being things indifferent, and so might be used, as Paule did the purification, Acts 28 and 21 Chap, of which nature though they yelded these Ceremonies to be, yet they thought them not meete to be used in respecte of the offence of the weake which reason Mr. Knewstubbes urged from Rom. the 14th and Cor. 1. 8th whereto the King answered, that the ministers were not to be supposed such as were weak in knowledg, and therfore not to be so much respected for their offence. Where Mr. Knewstubbes explaned himselfe, that he did not so much meane their weaknes in knowledge as in conscience, and the weaknes of their people. But his Majesty thought, if they had knowledge, they might in tyme satisfie theyr owne conscience and informe their people. And further his Majesty here added, that if the churche were now to be founded a new there was consideration to be had of the ordayninge of things offensiue, but in an established churche, it were dangerous to innouate things so long before ordayned, adding that to refuse them being imposed by authority he thought to sauor strongly of Anabaptistry. Other reasons were used agaynst them by the Doctor and the rest, to wit that they were significatiue ceremonies in respect whereof they hold them the more unlawfull to be ordayned in the Gospell. But his Majesty gaue instance that the liftinge up eies and hands, bowing knees etc. are significant ceremonies and yet used in the gospell, and so might these: adding that he cold not see it proued by Scripture, that significatiue ceremonies might not now be ordayned. Reasons likewise were obiected by some of the councell especially by the Lo: Admirall, that lay men ought to weare different apparell for orders sake accordingly, as the same ar prescribed by authority. The which being yelded unto by the Doctor he inferred that so ought the ministers to obey also. Whereto Doctor Reynolds answered that in ciuill use the ministers were to weare apparrell prescribed, but not such ceremoniall garments, in the acte of gods worship and seruice. And here then was something spoken of the different apparell of the Apostles, but no certeynty made thereof. His Majesty replied that before the times of popery such white garments were used in the diuine seruice of god by the ministers, whereunto Doctor Reynolds answered that there is indeede mention of such garments used in the times of the fathers Hierom and Chrisostom (as I remember) but as then and in those partes, white garments were the usuall colors of dignity in ciuill use, aswell as in Ecclesiasticall use, and that those so used in deuine ministration were different from the other in dayly use, onely in more ——[1]. And also some allegation was made that the garments were partly paganish. Whereto his Majesty answered that if that coold be proued, he woold further consider of them. And so he passed on from the surplice to the Crosse. Doctor Reynolds affirminge it to be an idoll of Popery, whereunto the papists doe ascribe much vertue, alleadginge the verse, Per crucis hoc signum fugiat per nil omne malignum, and therfore now it owght to be used of Christians. Whereto the King's Majesty answered that though it had been abused in popery, yet it had no such abuse before popery, but was used in the primatiue church by the christians, as a testimony to the Pagans that they reioyced in Christ crucified whom they scorned, and is so warranted by the authority of the fathers of the greatest antiquity, before popery was; and therfore now might it also be used of us, as it is without any opinion of necessity, or worshipe done to god by it, or of any effectiue or authoritative (?) power in it, but only as a significatiue Ceremony, adding further that he might use it aswell as Constantine did.

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[1] So in the MS.

Where the Bishope of London interposed saying yow can be content to cary crosses in your purses, Agaynst which the Doctor alleadged that although it had ben so used in those primitiue times as a ciuill thing, yet it might not be brought into the sacraments as indeed it was, (aswell into the one as into the other) untill in the last booke of King Edward the 6 it was taken out of the Sacrament of the supper, and left in the Sacrament of Baptisme. yea (sayeth his Majesty) and therfore yow will take it out of Baptisme also. Whereof the Doctor gaue some reason, for that thereto it was added with a word signifyinge, as a further perfection of Baptisme which was perfecte and sufficient without it. Whereto the King answered that we doe not there take it as any perfection to the Sacrament or any parte thereof, but when the Sacramente is done, it is added to shew the duty required thereby of the Baptised.

Agaynst which Mr. Doctor Reynolds argued that howeuer it might be borne with of the Christians in the primatiue times, as in their ciuill use of it among the Pagans for a testimony that they despised the reproache of the crosse, yet now hauing ben so long abused to Idolatry by the papists, it owght to be utterly abolished as the Brasen Serpent was, whereunto his Majesty answered that he woold retorte upon the Doctor his owne Argument thus. It hath neuer ben abused by the papists in Baptisme to Idolatry, ergo it ought not now to be abolyshed, as the Brasen serpent was. Whereas the Doctor replied that it was inoughe to make it execrable that it had ben abused to Idolatry otherwaies. Which his Majesty thoughte not sufficient for the abolishinge of it in baptism, except it coold be proued that it had ben so abused therein.

And there D. Mountegue brought a reason to proue that it might be so added to the Sacrament for that the like was done to the sacrament of the passouer, to wit: soure hearbes and the cup of wine which christ dranke with his disciples thereat before he instituted the sacrement of his last supper.

Whereto Doctor Reynolds answered that hearbes were prescribed in the word, and the cup of wine he thought necessarily implied in the appointment of that supper, for that it might not be thought that god woold prescribe a supper to be had of bread and meate, but that he woold. x x x[1]

4. Then his Majesty requiring Doctor Reynolds to proceede to the 4th matter by him propounded towching the discipline: the Doctor deliuered that, in the preface of the comunion booke it is declared that the discipline of the primitiue church were greatly to be wished, and so things appoynted in the comunion booke to be used till the ancient discipline can be restored, and (as it is conceiued) the statutes of K. Henry the 8. K. Edwarde the 6 and Q. Elizabeth avouched for the same purpose therfore he thought his Majesty now might by our owne acknowledgments well proceed to the establishing of the sayd discipline, which he thought might be very agreeable to our state, if the pastors of churches were deuided into Classes or capitula by the seuerall deaneries and therein they to assemble themselues, euery fortnight or iii, to heare and censure the offences comitted within their circuite: and then a synod to be holden yearelie of many deaneries under the Bishops ordering for determination of matters of greater importance and so by degrees to ascende to a synode of the whole diocesse, and of the whol prouince, and of the whol nation, as greater and more generall occasions of the whole churche shall import. The utility whereof for reformation of abuses now in the officialls he layed forth (as is conceiued) But his Majesty utterly distasting his coors sayd that this was rightly the presbitery of Scotland, wherein John and William and Richard and such like must haue theyr censure, and John will giue his vote, as William doth for he is a godly man, and so all the matter is ordered by simple ignorant men. Whereto sayd Mr. Knewstubbes if it please your Majesty he meaneth a presbitery only of ministers and not of lay men. To whom sayd his Majesty I kenne him well enoughe. And when I meane to liue under a presbitery, I will goe into Scotland agayn. But while I am in England, I will haue Bishops for I had not ben so quietly setled in my seate but for them, adding that he had sufficiently tasted of the mischiefs thereof of a presbitery in Scotland. ffor at the

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[1] So in MS.

first there they were content to strengthen themselues agaynst their oposites with the countenance of my authority, but when they once had ouercome their opposites, then they began to question about my authority, in a maner to hold me for no competent iudge ouer them. Euen according as some heare in England already haue begun to deale with me. ffor at the first theye prayed for me as supreme gouernor ouer all causes and persons, but after they began to abate their tearmes of my superiority. Therfore contente yourselues in this matter for I will thinke of this matter 7 yeares before I resolue to admitte of a presbitery, and by that time happily I maye waxe fat and if then I thinke it behouefull for me to haue any to stirr me up and awaken me, I will then haue a presbitery by me. Till then I will haue the Bishops to gouerne the churche, and they only shall haue to doe with the censure of excommunication being assisted with the deanes and grauest preachers. And the officialls shall hold theyr coorts as meere ciuill in matters of instance, and instead of the writte de excomunicato capiendo, shall haue a writte out of the Chancery de contumace capiendo according as it was concluded in the former dayes conference. ffurther were diuers things spoken of the high comission and of the oath ex officio for the limitation of the same to matters of highest scandall; which remayn further to beset downe when the chiefe heads, shalbe published. And besides it was then mentioned that the best preachers shoold be transported to the places where papists were: and a order taken for the amending of lecture stipends. Thus that dayes conference being ended at 4 of the Clocke his Majesty professed that if better reasons coold be alleadged, he woold willingly yeld to them, if not, then he wold haue them all agree together in one, and to moue theyr brethren to unity in the things that we might ioyne altogether agaynst the comon aduersary. And so his Majesty dismissed them untill Wenesday.

Upon Wenesday when all the Bishops had bene 2 howres with the King's Majesty he sent for the preachers,[1] and ther renewed agayn his former exhortations to unity and declared that he woold haue the Bishops to gouerne and the ministers to obey: alleadging that as the state of a monarch required all things to be done by the authority of one: so coold not the one doe all things himselfe imediately but he must needes use meanes under him for the doing therof, wherfore if that the ministers haue an grieuance they must complayne to the Bishop, if they coold not find reliefe at his hand, then seeke it of the Archbishop, if of him they cannot receiue right, then may they seeke it of my Councell, if there reliefe cannot be founde, then must they com to me. and I will see that they haue right. Thereupon exhorting the ministers to carrie themselues duetifull towards their Bishops; and the Bishops to deale fauorable with them, and more gently then euer they had don before. and further aduised the preachers to perswade their brethren in the Country to unity, and conformity. Whereupon Mr. Chadderton moued his Majesty that the ministers of Lancashire might be fauorably dealt with in the matter of Ceremonies, for that they had long ben disused there, and the people woold take greate offence at the use of them. Whereto though some of the Bishops oposed themselues, and then a tale was told of a preacher of the countrie that ministered the sacrament in a dish. to the offence of many, and thereby, as also by the like abuses in the ministration of the Sacrament had driuen away 500 from the Sacrament, and made 800 recusants yet the King's Majesty yelded to the request for the ministers and people of Lancashire: and when one of the Bishops required a time of tolleration to be prefixed, his Majesty woold set down no time, but sayd they shoold haue a large, and some of the Councell (by) sayd they may haue a yeare or two.[1] Thereupon Mr. Knewstubbes moued the like for Suffolk: but the King somewhat offended at the motion that he was no better understood, sayd he might answer him with accusing him that he understood him not generally for all. And then the Bishop of London to cut of any further matters, sayd we haue cause to prayse god that hath giuen us so gracious a king to sit on the throne that so had ordered all things amongst them to all theyr comforts and besought god that he might long sit upon his throne as Dauid and Salomon. And then the King moued the Bishops that they shoold take heede and deal gently and fauorably with their brethren, and not when they were gon to use fire and sword and make a vacuum lest the Deuill enter in. There was also speech about kneeling at the receiuinge of the comunion. (but[1] in what parte of the conference it is not certaynly conceaued. Whereof the King's iudgment was that the matter was indifferent whether they were receiuinge standing or sitting or kneeling, so it were receiued with reuerence, alleadging that in ffrance they receiued it sitting, in Spayn, in Scotland, etc. And therfore he thought it meete that such gesture therein shoold be kept and retayned in England as had bin accustomed.

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[1] Such phrases as these would point to one of the five Puritans either as the author of this account or as the informant of the author.

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[1] This differs considerably from Barlow's version.

The Bishop of London either that day or the former sayde, that there was in England some ambling comunions.

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[1] This parenthesis is not closed in MS.

IV

A LIST OF PURITAN COMPLAINTS PRIOR TO 1604

Bancroft's treatment of the Puritans' complaints was so careful and comprehensive that it merits more attention than could be allotted to it in the text. An attempt has been made to collect here the more important gravamina and to show whether they were rejected or accepted by the Canons of 1604. A complete list of complaints, as well as a complete bibliography, was found to involve a greater amount of labour than the result seemed to warrant. After all, the excellence of the Puritan position must be determined not by the number of times their demands were reiterated, but by their intrinsic importance and inherent justice. All the petitions, and indeed most documents drafted by the Puritans, are germane to this inquiry; but the following references will suffice for all but the most exacting research. Strype, *Whitgift,* I, 245, 246, 387; II, 6-13, 374; III, 47-62. Strype, *Annals,* I, 502; III, part i, 135, 264, 291. Barlow's *Summe and Substance of the Conference.* Usher's *Presbyterian Movement,* and these tracts: *An Abstract of Certain Acts of Parlement,* (1584), *Parte of a Register,* (1590), *The Abolishing of the Booke of Common Prayer by Reason of above fifty grosse Corruptions in it,* (1605), *Certain demandes with their groundes drawne out of holy writ,* (1605).

1. Episcopacy is not warranted by Scripture and therefore should be abolished. Rejected by the Canons as a whole.
2. There ought to be "prophesyings" or conferences of the ministers of the district. Rejected by Canons LXXII, LXXIII.
3. The Prince may not declare of vital importance "things indifferent" or compel obedience to them. Rejected by Canons I and XXX.
4. Nothing may be retained in the Church which the Popes had diverted from its original use as instituted by the Fathers of the Church. Rejected by Canon XXX, and others.

5. The greatest need of the Church is a preaching ministry. Recognized and rules adopted to insure preaching, Canons XLII-XLVIII, but the Puritan idea of a preaching ministry as Bancroft understood it was rejected, Canons XIV, LIV, LVI.
6. Ministers unable to preach are not ministers, for they fail to perform the minister's primary function. Rejected, Canon LVII.
7. The intention of the minister is not of the essence of the sacrament, that is, he may employ the form, though he does not approve of it, and yet not impair the sanctity of the rite. Rejected by Canon LVII.
8. The minister should be called by the congregation. (this was of course not believed by the party as a whole.) Rejected by Canons XXXI-XXXIX.
9. The minister shall read the service to the people from that part of the Church where all may hear and be edified. Canon XIV agrees to this, but shows that the bishop would not be likely to agree with the minister's decision.
10. The use of the sign of the cross in baptism is not according to Scripture and is hence forbidden. Compromised, Canon XXX.
11. The use of the ring in marriage is not according to Scripture and is hence forbidden. Rejected, Canons XIV, LXII.
12. There should be no saint's days or holy days, except Sunday. Canon XIII indirectly refuses it.
13. The Apocrypha may not be read. Canon LXXX indirectly refuses it.
14. Baptism by women and private baptism is not allowable. Rejected by Canons XIV, XXIX, LVII, but with certain exceptions specified in Canons LXVIII and LXIX.
15. No interrogatories ought to be administered to infants at the baptismal service. Rejected by Canon XIV.
16. That the minister should confirm such of his parishioners as he deemed ready. Rejected by Canons LX and LXI.
17. The minister ought to wear no surplice, cope, cap, etc. Rejected by Canons XXIV, XXV, LXXIV, but the clergy were ordered to wear very plain and simple dress, and it was explicitly said that no holiness could be attributed to the garments, which were to be used only to preserve decency and order.
18. No one ought to kneel when receiving the communion. Rejected by Canon XVIII.

19. The names of certain ceremonies are objectionable, as, matins, evensong, litany, advent, confirmation.

Although most of these changes were approved at the Hampton Court Conference, and some were actually introduced into the new edition of the Prayer Book, it could not be said that all the Puritan demands were granted.

20. The sacraments ought not to be celebrated in private houses, even for the dying. Rejected by Canon LXXI, but with provisions for limiting the practice.

21. No minister ought to be forced to subscribe to the XXXIX Articles. Unqualifiedly rejected, Canon XXXVI.

22. Pluralities are wholly unjustifiable. Canon XLI enacted a compromise, which while it rejected the Puritan demand, attempted to reform the abuses.

23. The oath *ex officio* is unlawful. The worst abuses complained of were reformed by Canons XCIII and XCIV.

24. Excommunication as used by the ecclesiastical courts is unlawful. Rejected by Canons LXXV and CXXII, but with an attempt to restrict the practice.

25. An objection, often indefinite, to the jurisdiction of the ecclesiastical courts in general. Rejected by the last forty canons.

26. No clergyman ought to be tried by a layman as an ecclesiastical judge. Rejected by Canon CXXII.

27. No minister ought to be summoned out of his own diocese to answer for an offence. Granted by Canon XCIV.

28. The fees in the ecclesiastical courts are excessive. Granted, Canons CXXXV-CXXXVI.

V

PURITAN MANIFESTOES

ADVICE TENDING TO REFORMATION

(Additional MSS. 28571, f. 199. Secretarial Copy, underlined by another hand.)

Whereas his Majestie is informed that if he please the Bishops he shall please all England,—(that the contrarie may appeare) it is thought fytt by some of creditt, and neere to his Majesty that both noblemen, gentlemen, and ministers (everie sort by themselves) complaine of corruptions, and desire reformation in severall petitions, signed with as many hands of everie sorte as may be procured and the same presented to his Majesty in name of the rest.

There must be sundrie petitions of ministers of sundrie partes, and yet but a fewe in a petition to *avoyde the suspition of conspiracie,* and the petitions to varie in woords, but agree in the desire of reformacon to be according to the woord, and all reformed *churches* about us: Provided they do not expresslie desire the removing of Bishops. And in *complayning of speciall grievances as the oathe ex officio, subscription, ceremonies,* especiallie of laymen, as Chauncellors and Commissaries their medling with the *churche censures* as well against ministers, as others, that they *excommunicate for* small causes, as to gett money etc.

Besides these *petitions,* (for the iustifying of the complaintes) ministers are to present unto his Majestie a note of Archdeacons, Chancellors, Commissaries, Bishops, or *highe Commissioners their* particulars as be materiall, and readie to be proved, especiallie such as haue bene, *synce the Kinges comming,* likewise some notes of their unlawfull and indirect favor to Papists, whoremaisters, etc. Heere is to be wished that the Londyners by the Lord Maior or some other good meanes would shewe themselves zealous in this respect.

The Ministers are also to stirre up the people to a desire or a *liking of* reformation, both in preaching, as in praying against the superstitious ceremonies, and tirannie of Prelates, provyded that it be performed in iudgment and discretion. Some of the ministers are also to be provyded to dispute upon some propositions to sett out the corruptions that be in the present Hierarchy and *Liturgie.*

Also Lawyers, against the tyme of the Parlement, *are to provide and make readie penned* Statutes tending to this purpose. And others are to write some learned treatises against that tyme.

Lastlie whereas the Archb. saith that of *8000* benefices, there are but *500* competent, and therefore Learned men must either lacke competent living or else haue more benefices then one: And whereas also Bishops make their enquirie of the number of graduates in the ministerie, of licensed preachers, and how often they preache, and sithe it is knowne that many be graduates that cannot preache, and many be licenced, that deserve for their insufficiency to be hissed out of the pulpitt, and that yf one be licenced in many Dioceses, he is accounted for so many preachers, and some sett downe themselves to preache once everie Sabbath which scarce preache once a quarter; there would therefore to discover the skirt of the highe Priest *be a diligent and faithfull enquirie made.* 1°. of the nomber of benefices that be in everie Diocese. 2°. the valewe of them by a common estimation. 3°. the nomber of soules to be taught of the ministers, unlearned, unpreaching, scandalous, hauinge more benefices than one, hauing but one, yet Non-resident, their preachinge but seldome, and unprofitablie. What be their names, livinges and causes of non-residence, how often, and what manner they preache. In this inquirie notice would also be taken of populous townes; and lastlie of Bishops and Commissaries their conversation, wherein scandalous, 1. The Bishops preaching where, and how often, their visitations, whether yearelie, and to what purposes, etc.

DIRECTIONS FROM THE BRETHREN IN LONDON, 1603, 14 JULY

(Sloane MSS. 271, f. 20.)

We whose names are underwritten doe agree to make our humble petition to the kinges majestie that the present estate of our church may be further reformed in all thinges needfull accordinge to the Rule of Godes holy word—and agreably to the example of other reformed Churches which have restored both the Doctrine and Discipline as yt was deliuered by our Saviour Christ, and his holy Apostles—In particular we desire the removing or reforming of the Dumbe and Idoll ministery, non residencie pluralities, offensive ceremonies lawelesse subscription, faultes in the Liturgie, or the Scottishe Liturgie established, oath ex officio, excommunication for trifles, and that by lay men and transcendant power of Bishops.

If any thinke not good to goo so farre as the 'xample of other churches, etc., they may staye at the first lyne or stroke yt is made—if any thinke good to discende into particulars they may goo beyound the second stroke—and recken vp what particulars they please, herein we leave everye man.

Becourse the Bishops go about to make the Kinge beleve by themselves or others, that yf he take the course yt they like, that then he shall please the whole state.

That therfore, you would labour so many ministers, gentlemen, and so upwarde, and commons, as you can to complaine themselves of the violences, grevious burdens and matters of just discontentment laid heretofore or still vpon all in general or any one in particular by themselves or any of their Chauncelers, Commissaries, or any other of the Officers whatsoever.

That you would in the said your complaint touch likewise what you knowe of their boulsteringe and keepinge in the offices of the Church such as have bene notoriously scandalous, as also what you knowe of their preferringe into and placinge in the said offices base and vile men of scandalous life.

Further that you Joyne not many ministers or gentlemen together in one petition, but that you drawe severall ones as you dwell or have used together severally for the avoydinge of the suspition of conspiracy, and that provide in the handlinge of the word to take all manner good occasions to lett the people see whatsoever is to be taken to hart, and iustly causinge discontentment, as also from the word to prepare them to be forwarde and earnest in seekinge and cravinge redresse, and that these thinges be proceeded in speedely and heedely.

ACTION OF THE NORTHAMPTONSHIRE CLASSIS. JULY, 1603
(Sloan MSS. 271, f. 20 b.)

Certaine motions in the cause of Reformation, July 21, 1603

1 That Judge Yelverton be solicited by some Lettre or personally to sett downe a petition to the which he, the justices and gentlemen of the countrey may subscribe.

2 That a survaye of the ministrye be taken, and of all the cheife grevances of the courtes candide, with the handes and witnesses of such as doe complaine.

3 That a Catalogue of all the Deaneries or Hundredes be taken, Mr. Barbon and Mr. Binx will helpe therin.

4 That man bringe his true knowledge of all such matters in writinge to Mr. Catelyne, Mr. Stone and Mr. Barbone, and they to communicate one with another, and this with all possible speede, and yf it may be, by this day 3 weekes, and for the better attayninge to this to consult with the godly in the same parishes, or the parishe next adjoyninge.

5 In the viewe of the ministery, enquire out 1. Dumbe ministerie and who made them. 2. Under who they serve and what they have for their paines. 3. The non-residentes, and where they live, and who supplye their places. 4. Pluralities and how many Livinges they have, and howe farre distante, and the valuations. 5. Howe offensive in life, and howe longe they have continued soe notwithstandinge all courtes of reformation, although they have bene presented. Added, To procure a note of all such parsonages as by the late Bishops have bene impropriated and leased out for a longe tyme, wherby the ministers maintenaunce is decayed. Item. What Incumbentes have compounded with the Patrons at their entraunce for part of their livinges wherby the Patrones enjoye the benefite that might maintayne a preacher.

6 Item. that there be 2 ministers chosen for Northamptonshire to prosecute these causes at the Parliament, by common advice and consent, their places supplyed, their charges borne.

7 That supplication be made by the ministers to the Knightes and Burgesses of this shire to request and charge them to stand and further Reformation everye way so farre as god hath given

them light, as the dumbe ministerye, non-residencye, commissaries, courtes, etc.

8 That the ministers of Northamptonshire, doe charge the Bishops whosoever be clarkes of the convocation that they have god before their eies, and not to strive against their consciences to maintayne knowen corruptions.

9 That according to the patterne of a supplication of Mr. Dudley Fenners, the ministers of the same shire make a supplication, and offer it at the convocation dore, or proffere it by some of the house, witnesse beinge taken.

10 That everye minister not only by publique preaching doe urge Reformation, but also by worde and lettres doe labour the same. and also that the Bishops and Deanes be solicited by them that have acquaintaunce with them keepinge true copies of their lettres.

11 That for all these supplications, Mr. Cateline, Mr. Stone and Mr. Barbon take order with the advise of the brethren to procure their supplications in readines, and also yt they keepe true copies, and Regesters of all that they doe.

12 That yf any man can informe any further matter of the same nature, yt he certifye some one of these 3, Mr. S. Mr. C. Mr. B.[1]

This done in the presence of
John Barbon, Daniell Wight, Jonas Chaliner,
Richard Thornill, Sampson Woode, Henry Burne,
Frauncis Bradley, Henry Becke, Robert Bincks,
Robert Smart, William West, Christopher Sanderson,
William Dale, Thomas Randleson, Thomas London,
Christopher Spicer.

THE PURITANS' DIRECTIONS TO AVOYDE THE PROCEEDINGES OF THE BYSHOPPS[2]

(Additional MSS. 28571 f. 205.)

If the Busshopps proceed against any they must do it
ether { quatus { they are Busshops.
or by vertue of the Comission.

To send out processes to cite men and to sitt in Iudgment is a

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[1] Snape, Chalenor, Barbon.

[2] This is the endorsement.

principall parte of the Judgment ecclesiastical: This being by statute 1° Elizabeth: annexed to the crowne, is an especiall prerogative Regall: howe this statute 25 Henry 8 cap. 2° dothe leue the Busshop such priuiledges onely as are not preiudiciall, to the prerogative Royall or to the lawes and statutes of the realme, and uppon this grownde did the parliament, 1° Edwardi 6 enact that all processes ecclesiasticall should be in the Kinges name: as are the processes of the Kinges Court in the Comon Lawe.
Ob. what Authoritie is then left to the Busshopps. Quæ ad ordinem non quæ ad iurisdiconem spectant as to ordayne, institute etc. Wherefore if any be cited, they may appeare to avoyde occasion of sclander but they are in open place to protest that sith all iurisdiccon is in the Kinge, and that by their oathe to the supremacy they are bounde to acknowledge noe authoritie but that which it is derived from his Majestie that therefore they doe not appeare as of dutie nether acknowledge the Busshopps authoritie or Iurisdiccon in ecclesiasticall causes, unlesse he haue sufficient warrant from his Majestie under the broade seale accordinge to the statute 1° Elizabeth Cap. 1°.

The high Comission is established by 1° Eliza: Cap. 1° and they must proceed ether uppon the 1° Eliz. Cap 2° or uppon the Cannons.

Towchinge the statute first it ratifieth nether the booke of comon prayer lately corrected, nether the former that was used in all the queenes tym, but only the booke of Ed. 6. with two alterations specified in the statute. Whereas that which hath byn hetherto used hath many alteracons, and therfore they cannot proceed against any for the neglect of other of these bookes by vertue of the statute. Secondly, that statute dothe inflicte noe such penaltie for omission or refusall of the vestments or ornamentes of the ministers, and therfore none can be towched in his liuing for the surplesse by the statute, and ther is not any other that dothe comaund it, only they may be punished for contempt by imprisonment and not otherwise.

As for the Cannons if they shalbe confirmed and soe the high Comission execute penaltie of them, it wilbe a verie doubtfull poynt whether they can stretche soe farr as to putt a subiect from his freehold, and if men putt it to the triall of the Comon lawe it will seeme a verie hard case, for admitt that the convocacon howse may for breach of Church orders dispossesse a minister of his free hold, when not any other subiect, and soe by consequent the whole body of the Realme may (if they transgresse the Churche Orders) be putt out of their landes and livinges, and be enthralled to the clergy as in tymes past, which gapp will not easely be opened especially since it is graunted of all, that ecclesiasticall lawes doe properly tend only to the spirituall chastisements.

Conclusions uppon the premisses.

Noe Busshopp except he haue a high Comission can with any couller of lawe proceede against a minister.

The high Comission cannot inflict any warrantable penaltie for omission of the surplesse or the booke of comon prayer nowe extant and in use by vertue of the statute.

If any be by Busshopp or Comission depriued he may notwithstanding keepe possession of his liuing untill by lawe it be tried whether the Busshopps act can dispossesse him of his freehold.

The manner howe to keepe possession.

Lett him prouide that some one, ether wief, child, servaunt, or freind be alwayes in the Church, and in the howse night and day, soe noe other can be inducted. If any offer to thrust or pull him or his out of the Church, lett him not much contend, but being thrust out lett him goe to the Justices neere adjoyning, and deposing before them that he was thrust out of possession, they must of course lett him in possession agayne. If the Busshopp shall sequester his liuinge, the lawe hath a verie direct remidie to dissolve the sequestration.

Reasons not to subscribe besides the things that are simply against the word of god in the booke.

Busshopps Cannons and articles are not lawe and subiectes are to be governed by lawe.

To subscribe weare iniuriously to discourage and reproache the religious knightes and gentlemen of the parliament who uppon good grownde *haue labored* to remoue it.[1]

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[1] These lines are underlined in the MS.

It would prevent them of the good which they may doe *in this behalf the next Session of the parliament.*

It would animate the Busshopps to enforme the Kinge that it was *but a fancy of his lower house to stand soe much uppon subscription for the ministers themselues haue yealded sauing a verie fewe.*

If many stand out it will pittie the Kinges hart to displace soe *many* godly ministers, which else in a fewe would seeme singularitie.

It will much dishonor god that men should subscribe to thinges against his word. It must be a corasive to their owne consciences and procure a curse on them and their ministry notwithstanding the pretence of caring for the flock.

It will giue a grevous offence to the consciences of the godly, to the strong and weake, that after soe longe tyme men should goe backwards to popery. or at the least to idle Ceremonyes.

It wilbe a great preiudice to the obteyning of *the Kinges promise viz: that he would not only remove Cross and Surplesse but alsoe subscription, if this will content men,* this was accepted and wilbe sued for.

It wilbe an idle president left to all posteritie, and preiudice the godly that hereafter shall seeke the reformacon hereof.

VI

WHITGIFT'S LETTER OF 1597 CONCERNING BANCROFT'S PREVIOUS CAREER

1597 REASONS ALLEDGED BY THE ARCHB: OF CANTERBURY FOR DR. BANCROFT'S BEING PROMOTED TO THE BPRIC OF LONDON.

Baker MSS. in the Library of the University of Cambridge, M. m. 1. 47. f. 333-5. Another copy with an endorsement in what seems to be Bancroft's own handwriting, Petyt MSS. in the Inner Temple, London, 538. 38. f. 155. Strype, Life of Whitgift, II. 386-388.

His Conversation hath been without blame in the world, having never been complained of, detecteth (sic) or for ought he knoweth suspected of any extraordinary enormity.

He hath taken all the degrees of the schools as other men have done and with equall credit.

He hath been a preacher against Popery about 24 years and is certainly no papist. Indeed he is not of the Presbyterial faction.

Since he hath professed Divinity, he hath ever opposed himself, against all sects and innovations.

By the appointment of Archbp Grindall, he did once visit the Dioc: of Petr: About 12 years since, he was likewise a visitor of the Diocese of Ely.

He was sent for from Cambridge to preach at Bury, when the pretended Reformation was begun there, without staying for ye magistrate as the term was then, and when the Sheriff, as he said, could hardly get any preacher in that country, that either would or durst oppose themselves against it.

At his being at Bury, he detected to the Judges the writing of a Poesie, about her Matie armes, taken out of the Apocalypse but applyed to her Highness most falsely and seditiously. It had been sett up a quarter of a year in a most public place without concealment.[1] I note these two last points, partly for the effects that followed of them, and because he was greatly maligned, by no mean persons for his duty in both.

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[1] The legends were as follows: "I know thy works, that thou art neither cold nor hot. I would thou wert cold or hot." "Therefore, because thou

He remained with the late Lord Chancellor[1] 12: years at the least for the most part in her Matie court, and was in good Reputation with him and often employed in sundry matters of great Importance for her Highnes service. Since his sd Ld's death,[2] he hath remained with the like credit five years almost with the L: Archbp of Canterbury.[3] He hath been one of her Matie Commission general, for causes ecclesiasticall throughout England, almost 12: years, in wch time there have been few causes of any Importance dealt in, either at Lambeth or London wherein he hath not been an Assistant.

He was by his diligent search the first Detector of Martin Mar-Prelates Press and Books, where and by whom they were printed.

He was an especial man that gave the Instructions, to her Matie learned Council, when Martin's agents were brought into the Star Chamber.

By his advice that course was taken wch did principallye stop Martin and his Fellows' mouths, viz. to have them answered after their own vein in writing.

By his diligence to find out certain letters and writing Mr. Cartwright and his complices, their setting up their Discipline secretly in most shires of the Realm, their Classes, their Decrees, and Book of Discipline were first detected.

The chief Instructions were had from him whereby her Matie learned Counsell framed their Bill and Articles against Mr. Cartwright and the rest in the Star Chamber.

By his letter written at the commandment of the Lord Chancellor to himself,[4] her Majesty was thoroughly informed of the state of the Church, how it then stood, and how far these factious persons had impeached her Highnes authority and the Government established.

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art lukewarm, and neither cold nor hot, it will come to pass that I will spue thee out of my mouth.'' ''Notwithstanding, I have a few things against thee that thou sufferest the woman, Jezebel, (i. e. the Queen) which maketh herself a prophetess to teach and deceive my servants, to make them commit fornication, and to eat meat sacrificed to idols.'' Strype, *Annals*, III. pt. i. 176.

[1] Sir Christopher Hatton, Chancellor, 1587-1591.

[2] November 20, 1591.

[3] John Whitgift.

[4] This letter cannot be traced.

By his only diligence, Penry's seditious writings were intercepted as they came out of Scotland, and delivered to the now L. Keeper.[1]

His earnest desire to have the slanderous libells against her Majestie answered and some pains of his taken therein wold not be omitted, because they show his true Affection and dutifull heart unto her Highness.

His Sermon at Pauls Cross the first Sunday in the Parliament 1587[2] being afterwards printed by direction from the L. Chancellor and L. Treasurer,[3] was to special purpose, and did very much abate the edge of the Factious.

The last Parliament, he did sett out two Books[4] in defence of the State of the Church, and against the pretended Holy Disc. wch were liked and greatly commended by the learnedest men in the Realm.

He hath been an especiall man of his calling that the L. Archb of Canterbury hath used for the space of 9: or ten years, in all the stirs wch have been made by the factious, against the good of the Church, wch hath procured him great dislike amongest those who are that way inclined.

Though he hath been carefull and zealous to suppress some sort of sectaries, yet hath he therein shewed no tyrannous Disposition, but with mildness and kind dealing, when it was expedient, hath reclaimed diverse.

Whilst he hath been occupied for 15 or 16: yeares as hath been expressed, 17 or 18 of his Juniors (few or none of them being of his experience) have been preferred, eleven to Deaneries, and the rest to Bishopricks of wch number, some have been formerly inclined to Faction, and the most as neuters have expected[5] the issue, that so they might as things should fall out run with the time. They that list may enter into ye consideration hereof particularly.

He hath been long in speech for ye Bishoprick of London; his late good L. told him,[6] the summer before he died, that her Majesty was purposed, to have removed Bishop Elmer[7] to Worcester and to have preferred him to London.

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[1] Thomas Egerton.

[2] An error: it should read, 1588-9.

[3] William Cecil, Lord Burghley.

[4] "The Survey of the Pretended Holy Discipline" and the "Dangerous Positions."

[5] i. e. awaited.

[6] Hatton.

[7] Usually written Aylmer.

Bishop Elmer offered thrice in two years, to have resigned his Bprick with him, upon certain conditions, wch he refused. Bp Elmer signified the day before his death, how sorry he was that he had not written to her Matiė and commended his last suit unto her Highness, viz: to have made him his Successor.

Since the death of the last Bishop,[1] no man hath been so commonly named for that place as he, nor is more generally thought to be more fit for it.

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[1] Richard Fletcher.

VII

BIBLIOGRAPHY

Although there is no bibliography of English History during this period, the deficiency is partly supplied by the lists of books printed in the *Cambridge Modern History*, III, 821-824, 847-851, in Makower's *The Constitutional History and Constitution of the Church of England,* 504-534, and in Dexter's *Congregationalism as seen in its Literature.* The first two lists are brief but well selected; the latter comprises several thousand titles but is arranged chronologically in order of publication, which is practically equivalent to no arrangement at all. Mr. Dexter, however, gives very reliable information about the libraries in which the rarer tracts can be found, though the shelf marks he gives have in some cases been changed. There are no other lists worth the attention of the serious student.

The titles which are given here, and the critical remarks which accompany them, have been added, not in hope of filling this long-felt want of a good bibliography, but of assisting others who may hereafter labor in this same field to avoid some of the pitfalls and difficulties, and to enable them, if possible, to go on from the point where the present writer has left off. *Only those books have been mentioned which seem to be of considerable value.* Lack of space alone would forbid an enumeration of even the titles of all the books necessarily consulted in the preparation of this work. Most of the secondary books. furthermore, are not worth mentioning, for they merely retell, more or less accurately, the story told by some of the larger books.

BIBLIOGRAPHY

I. MATERIALS RELATING TO THE WHOLE PERIOD, 1583-1610

a. Manuscripts

It is in many ways unfortunate for the student that the bulk of valuable material is still in manuscript, but there are probably few periods of history where more has been done to render manuscript material accessible and easy to handle. The English Government has issued during the last half century a series of calendars, of which the most important in this connection are the *Calendars of State Papers Domestic,* listing the documents preserved in the Public Record Office, Chancery Lane, London, E. C. For this period, the series is already complete. Next in order of importance are the *Reports of the Royal Historical Manuscripts Commission,* which contain detailed information concerning nearly all the more important private collections. None of these volumes is meant to relieve the searcher altogether of the use of the manuscript itself, and only attempts to give so full an account of its contents that he may be guided at once to those papers which he desires to use. But many important documents have been carefully printed in extenso in these calendars, especially by the Historical Manuscripts Commission, and the work of the editors, in arranging, dating, and determining the authorship of doubtful papers, renders the *Calendars* indispensable adjuncts of any research at all. In fact, the hurried student must rely upon them altogether.

Except for a few volumes of the *Calendars Domestic,* the series is trustworthy and accurate. Even the indices may be trusted. The worst of all perhaps is the *Calendar Domestic,* 1603-1611. The entries in this volume are very brief, in some cases actually misleading, many of the dates assigned doubtful or undated MSS. are certainly questionable, and the index is bad.

The *Calendars Foreign, Spanish,* and *Venetian,* are translations, for the most part in full, of the despatches of English Ambassadors abroad or of foreign Ambassadors in England. All three contain very little matter on ecclesiastical affairs and that little untrustworthy.

The catalogues of the older MSS. at the British Museum—the

Cotton, Harleian, and Lansdowne MSS.—are not all that could be desired. The entries are not always descriptive, the indices are almost useless for any student who wishes to be thorough, and the volumes have been so often re-foliated, that it is hard to find the document desired. Needless to add, the serious student cannot neglect any of these repositaries, least of all the private archives. Neither the Record Office nor the British Museum (despite the value of their collections) contain the most important material on ecclesiastical affairs.

For convenience I have placed here a list indicating the whereabouts of the collections referred to in the footnotes, in cases where the MSS. is often cited and where the name is not itself a sufficient indication of its whereabouts.

Additional MSS.	British Museum.
Arundel MSS.	British Museum.
Ashmolean MSS.	Bodleian Library, Oxford.
Baker MSS.	Cambridge University Library.
Barrington MSS.	Library of the Inner Temple, London.
Congregational Library.	Memorial Hall, London.
Cotton MSS.	British Museum.
Egerton MSS.	British Museum.
Excheq. Q. R. Eccles.	Record Office.
Gurney MSS.	Library of J. H. Gurney, Esq. Keswick Hall Norfolk.
Hargrave MSS.	British Museum.
Harleian MSS.	British Museum.
Hatfield MSS.	Marquis of Salisbury's residence. Hatfield, Herts.
Holkham MSS.	at the Earl of Leicester's residence. Holkham Hall, Norfolk.
King's MSS.	British Museum.
Lambeth MSS.	Lambeth Palace, London, S. W.
Lansdowne MSS.	British Museum
Morrice MSS.	Dr. William's Library, Gordon Sq., London
Patent Rolls.	Record Office.
Petyt MSS.	Library of the Inner Temple, London.
Privy Council Register (MSS.)	Privy Council Office, Whitehall, London.
Rawlinson MSS.	Bodleian Library, Oxford.

Royal MSS.	British Museum.
Roman Transcripts.	Record Office.
Sloane MSS.	British Museum.
S. P. Dom.	State Papers Domestic, Record Office.
Stonyhurst MSS.	at Stonyhurst College, Blackburn, Lancashire.
Stowe MSS.	British Museum.
Tanner MSS.	Bodleian Library, Oxford.

The other repositories referred to are sufficiently described by the reference itself.

b. Histories of the Church

FULLER, THOMAS, D. D. THE CHURCH HISTORY OF BRITAIN; FROM THE BIRTH OF JESUS CHRIST, UNTILL THE YEAR 1648. six parts.

For J. Williams: London, 1655, folio.
Duplicate of first edition with new title page, London, 1656, six parts, folio.
New edition with author's corrections, London, 1837, 8°.
New edition edited by J. S. Brewer, 6 volumes, Oxford, 1845. 8°.
Edition with prefaces and notes by James Nichols, 3 volumes, London, 1868. 8°.

Fuller gives in the main a narrative told in his own words, and prints a few documents, now to be found in most cases more accurately printed elsewhere. The account is annalistic. He seems to have used some of Leland's and Stow's MSS. collections, and perhaps some of Camden's. He also derived a good deal of information from oral tradition and occasionally gives a story of Bancroft's time which he declares was told him by the man himself. He favored the Church, but, publishing during the Commonwealth, was forced to treat the Puritan history very circumspectly. Strype declares Fuller inaccurate: "For the copy that is printed in Fuller's *History* is like the former letter, full of errors, additions, omissions, and without date of place, month, or year." (*Whitgift,* I, 327. See also, 317, 311.)
Heylin attacked Fuller in the *Examen Historicum, or, a Discovery and examination of the mistakes . . . in some modern histories occasioned by the partiality and inadvertences of their several authors.* two parts. London, 1659. 8°.

This was answered by Fuller in *The Appeal of injured Innocence*, 1659, folio. None the less, Fuller's *History* is still a book to be reckoned with.

HEYLIN, PETER. ECCLESIA RESTAURATA: OR THE HISTORY OF THE REFORMATION OF THE CHURCH OF ENGLAND.

Editions, 1661, 1670, 1674 (corrected and with numerous changes); Cambridge, 1849, 2 volumes. 8°

AERIUS REDIVIVUS, OR THE HISTORY OF THE PRESBYTERIANS FROM THE YEAR 1536 TO . . . 1647.

Oxford, 1670, folio. 2nd edition, London, 1672. folio.

Heylin, born in 1600, eight years before Fuller, was more nearly a contemporary of these events. He became a great admirer of Laud, and a great enemy of the Puritans, both of which proclivities did not fail to leave clear traces in his writings. His various books (of which these are the most important for this period) form a reasonably complete history of the Church from the Reformation to the Commonwealth. His books are valuable despite their bias, because he possessed unusual opportunities for collecting information, and was able to talk with many contemporaries of the events. On the whole, he gives us the administrative view as it was current in the generation, 1610-1640.

COLLIER, JEREMY. AN ECCLESIASTICAL HISTORY OF GREAT BRITAIN CHIEFLY OF ENGLAND FROM THE FIRST PLANTING OF CHRISTIANITY TO THE END OF THE REIGN OF KING CHARLES THE SECOND. WITH A BRIEFE ACCOUNT OF AFFAIRS OF RELIGION IN IRELAND. COLLECTED FROM THE BEST ANCIENT HISTORICAL COUNCILS AND RECORDS.

London, 1708 and 1714, 2 volumes folio.
Second edition, London, 1840-1841, 9 volumes; and again, London, 1852.

Based somewhat on Fuller, Heylin, and lesser works, Collier's History is also based on manuscript researches in the Cotton Library and other sources not now traceable.

STRYPE, JOHN. WORKS. 27 volumes.

First edition, 1694-1721.
Reprinted, Oxford, 1812-1824; Oxford, 1840-1842.

These volumes are an attempt to write a narrative history of the Church from the Reformation to the Hampton Court Conference, by patching together original documents and abstracts of documents with more or less comment and statement by the author. Possessed of little judgment and no literary style, Strype was not very successful in attaining his main purpose. His narrative is broken by so many documents, and his own comments are of so little value, that as a history of the Church, the work is of no consequence. Moreover, the frequent modernisation of spelling and even of phraseology, the careless omission of quotation marks, the failure consistently to use the third person in giving abstracts of letters, make it impossible to accept his transcripts as accurate. Nevertheless, it must be confessed that with all their shortcomings, these volumes contain the most considerable amount of material now in print on the period they treat, and will better than any other single series repay the work of the student.

Strype used freely the Cotton MSS., Baker transcripts (both those now in the Harleian MSS. and those at the Library of the University of Cambridge), and probably most of Burghley's papers now in the Lansdowne MSS. He had other manuscript material not now forthcoming, possibly some of Stow's and Camden's still unused collections. The *Life of Whitgift* and of *Aylmer,* and the *Annals of the Reformation* are the most important for this period. The references in the text are all to the Oxford edition of 1812-1824.

MAKOWER, FELIX. THE CONSTITUTIONAL HISTORY AND CONSTITUTION OF THE CHURCH OF ENGLAND.

(Originally published in German, a very good English translation appeared in London in 1895.)

This book describes the history and form of the theoretical administration of the Church. It does little towards even stating the really difficult problems. The text is too brief, the footnotes too voluminous and technical, to make the book readable or even (for the ordinary student) usable. It is nevertheless a valuable and important contribution from a man deeply learned in the lore of the Church.

FRERE. W. H. THE ENGLISH CHURCH IN THE REIGNS OF ELIZABETH AND JAMES I. (1558-1625)

Volume V of A History of the English Church, edited by Stephens and Hunt. London, 1904.

The most recent and by all odds the best presentation of the subject. It is based on a fresh study of the older authorities with some work in the State Papers Domestic and in the British Museum, and with full use of the various monographs written on the subject. At the end of each chapter are very brief but well chosen bibliographical comments. The part relating to the years 1590-1625 is the least well done and gets only a very short distance beyond Strype, Neal, and Fuller.

c. Biographies

The student will of course use Le Neve's *Fasti Anglicani,* Newcourt's and Henessey's *Repertoriums,* Cooper's *Athenae Cantabrigienses,* and Foster's *Alumni Oxonienses* in all cases, and particularly for obscure names.

FULLER, THOMAS. HISTORY OF THE WORTHIES OF ENGLAND, ENDEAVOURED BY THOMAS FULLER. Four parts.

London, 1662, folio.
New edition with notes, J. Nichols, 2 volumes, London, 1811.
New edition by P. Austin Nuttall, 3 volumes, London, 1840.

Contains a great deal of rumour and legend with some trustworthy details not elsewhere obtainable.

WORDSWORTH, C. ECCLESIASTICAL BIOGRAPHY OR LIVES OF EMINENT MEN IN ENGLAND, 1530-1689.

First edition, 6 volumes, London, 1810.
Second edition, 6 volumes, London, 1818.
Third edition, 4 volumes, London, 1837. Large Introduction and additional lives.
Fourth edition, 4 volumes, 8°, London, 1853.

Chiefly valuable for printing Sir G. Paul's Life of Archbishop Whitgift. (IV, 309-403.) The life of Whitgift by Paul, while effusive and laudatory, contains a great deal of information about his private life and episcopal routine not to be found elsewhere. Paul was one of Whitgift's confidential servants and was with him for years.

HOOK, W. F. AN ECCLESIASTICAL BIOGRAPHY CONTAINING THE LIVES OF ANCIENT FATHERS AND MODERN DIVINES.
8 volumes, London, 1845-52.
To be used with great care.

HOOK, W. F. THE LIVES OF THE ARCHBISHOPS OF CANTERBURY.

First edition, London, 1860-76, 12 volumes.
Second edition, London, 1875. 6 volumes.

The lives of Whitgift and Bancroft are poor and abound in minor errors. The book must be used with great care, but is useful in many ways.

BAYNE, PETER. THE CHIEF ACTORS IN THE PURITAN REVOLUTION.
London, 1878.

This book covers the period 1560-1670. He deliberately adopted the dramatic method, and attempts to make the reader see with the eyes of each character in turn. The book is interesting and useful, though not always accurate.

WHITE, F. O., REV. LIVES OF THE ELIZABETHAN BISHOPS OF THE ANGLICAN CHURCH.
London, 1898.

Useful, but pretentious and neither complete nor wholly trustworthy. It claims to be written chiefly from manuscript sources, but no one man can do much with the manuscript sources for the lives of so many men. Any such attempt must necessarily be limited in its results.

d. Collections of Documents

PRIVY COUNCIL REGISTER, NEW SERIES, 1542—(Still appearing.)

Edited by J. R. Dasent.
Published under the direction of the Master of the Rolls.
London, 1890, etc.

The last volume concerned the year 1602. But as a matter of fact the series is almost as complete now as it will ever be for this period, because the original register for the years 1603-1612 is lost and only a very brief and unsatisfactory abstract has survived in Additional MSS. 11402. The series is simply invaluable for all topics of this subject.

RYMER, J. FOEDERA.

20 volumes. London, 1704-1722.

An official publication of proclamations and commissions, and various formal papers. It contains a few of value on ecclesiastical affairs.

ZURICH LETTERS, SECOND SERIES. CORRESPONDENCE OF SEVERAL ENGLISH BISHOPS AND OTHERS WITH SOME OF THE HELVETIAN REFORMERS. 1558-1603.

Edited by Rev. H. Robinson for the Parker Society, Cambridge, 1845, and a second edition, 1846.

These have been well printed and are very important, but are more numerous for the early years of Elizabeth's reign than for the later, and are more concerned with doctrine and the theoretical form of church government than with administration and the course of English affairs.

CHAMBERLIN, JOHN. LETTERS DURING THE REIGN OF ELIZABETH.
Camden Society, 1861.

BIRCH, T. COURT AND TIMES OF JAMES I.
2 volumes, London, 1848.

The cleverest and most accurate of the letter writers of the period was John Chamberlin, and in these volumes we have his correspondence, including letters to him as well as from him, from about 1590 through the year 1610. Prior to 1600 the letters are few and meagre, but from 1604-1610 they are numerous and full of details of Court life and of London happenings which are not only interesting but valuable. Unfortunately, they have been inaccurately printed and the serious student is advised to consult the originals easily accessible at the Record Office in the State Papers Domestic. Taken all in all, they afford the best ''side light'' on the situation we have. He was inclined to sympathize with the Puritans and the common lawyers, and was not always respectful in his treatment of the bishops. It should also be remembered that he often does not himself claim that his information is anything but rumour and hearsay.

GORHAM, G. C. GLEANINGS OF A FEW SCATTERED EARS DURING THE PERIOD OF THE REFORMATION IN ENGLAND AND OF THE TIME IMMEDIATELY SUCCEEDING, 1533-1588.
London, 1857.

An excellent and serious book, but one in which the material is rather scattered. It contains, however, numerous letters and documents of value, carefully printed.

PROTHERO, G. W. SELECT STATUTES AND OTHER CONSTITUTIONAL DOCUMENTS ILLUSTRATIVE OF THE REIGNS OF ELIZABETH AND JAMES I.
Third edition.

An invaluable book with which every student should be familiar. It is accurate and authoritative and the preface is a remarkable example of illuminating statement.

GEE, H. and HARDY, W. J. DOCUMENTS ILLUSTRATIVE OF ENGLISH CHURCH HISTORY.
London, 1896.

Inasmuch as it attempts to cover the whole history of the Church, the space available for this period was small. It reprints a few well known documents.

PERRY, G. C. VOX ECCLESIAE ANGLICANAE ON THE CHURCH, MINISTRY, AND SACRAMENTS. A SELECTION OF PASSAGES FROM THE WRITINGS OF THE CHIEF DIVINES OF THE CHURCH OF ENGLAND.
London, 1868.

Useful.

Numerous volumes of State Papers have been printed regarding the reigns of Elizabeth and James I of which the best are: Birch's *Memoirs of the Reign of Queen Elizabeth;* Forbes, *Full View of the Public Transactions in the Reign of Elizabeth;* Haynes's, Murdin's, Sadler's, Sydney's *State Papers;* Wright's *Queen Elizabeth and her Times;* and Winwood's *Memorials.* They are all books to reckon with, but are concerned on the whole with foreign affairs and political history.

e. General Histories and Secondary Books

GARDINER, S. R. HISTORY OF ENGLAND FROM THE ACCESSION OF JAMES I. TO THE OUTBREAK OF THE CIVIL WAR.
10 volumes, London, 1884. Volumes I and II.

By all odds the best and fullest account of the period. It is regrettable that the important political and parliamentary happenings should have left so little space for ecclesiastical history. Even this space, Dr. Gardiner felt compelled to devote almost entirely to the political side of ecclesiastical affairs and was therefore very little concerned with the Church as an institution.

SPEDDING, JAMES. THE LETTERS AND LIFE OF FRANCIS BACON INCLUDING ALL HIS OCCASIONAL WORKS. . . . NEWLY COL-

LECTED AND SET FORTH IN CHRONOLOGICAL ORDER WITH A COMMENTARY BIOGRAPHICAL AND HISTORICAL.
London, 1861-1874. 7 volumes.

Invaluable and authoritative. The letters and papers have been carefully printed and the comments, though sometimes wordy and overingenious, add considerably to our knowledge of the period. It is especially clear and good upon legal and parliamentary matters, but has little or nothing regarding the crucial years, 1608-1609.

HALLAM, H. THE CONSTITUTIONAL HISTORY OF ENGLAND.
2 volumes. 1827.

A remarkable book in its day and one still to be reckoned with, despite the new material brought to light.

HUNT, J. RELIGIOUS THOUGHT IN ENGLAND FROM THE REFORMATION.
3 volumes, London, 1870-1873.

Useful, but hardly an accurate or complete account of English thought.

GWATKIN, H. M., REV. (Editor). THE CHURCH, PAST AND PRESENT.
London, 1900.

A co-operative work by various hands covering the whole history of the Christian Church. Despite its brevity, its clarity, sanity, and insight into conditions render it a remarkably stimulating book.

COLLINS, W. E. BISHOP OF GIBRALTAR. THE ENGLISH REFORMATION AND ITS CONSEQUENCES.
London, 1896. (Church Historical Society.)

Interesting and good.

HAWEIS, J. O. W. SKETCHES OF THE REFORMATION AND ELIZABETHAN AGE TAKEN FROM THE CONTEMPORARY PULPIT.
London, 1844.

Affords interesting and valuable side lights, with some biographical data.

CHILD, G. W. CHURCH AND STATE UNDER THE TUDORS.
London, 1890.

Rather rambling and disconnected, and injured by an attempt to "write the subject down" for the laity. Moreover it is a book with a thesis, and marred by an inexact use of terms. Nevertheless it is stimulating.

LEE, F. G. THE CHURCH UNDER QUEEN ELIZABETH.

Two volumes, London, 1880.
Second edition, London, 1892.

He pays especial attention to the Catholics, but gives little besides martyrology. He assumes frankly the ultra-high-church view.

BLUNT, J. H. THE REFORMATION OF THE CHURCH OF ENGLAND, ITS HISTORY, PRINCIPLES, AND RESULTS.

First edition, London, 1868.
Second edition, London, 1869.
Third edition, London, 1874.
Fourth edition, 2 volumes, London, 1878.
Fifth edition, London, 1882.

He has attempted to trace precedents for some part of the "constitution," but not very thoroughly. It is a work of great labour but is marred by a very evident high-church bias, and by a thesis, frankly espoused, that the real Churchmen were driven from their places by the Puritans in 1560 and regained control only under Laud. He slights the period 1583-1610 as if its story were a part of the Dark Ages.

DOWDEN, EDWARD. PURITAN AND ANGLICAN.
London, 1900.

The author aims to make clear the essential ideas underlying religious and literary thought at this epoch. While a piece of literary criticism rather than a piece of historical exposition, it is a remarkable performance, and an unusually stimulating book.

HENSON, H. HENSLEY. STUDIES IN ENGLISH RELIGION IN THE SEVENTEENTH CENTURY.
London, 1903.

Valuable.

WAKEMAN, H. O. CHURCH AND PURITANS, 1570-1660.
London, 1887.

The best of a number of rather commonplace and inaccurate manuals.

II. MATERIALS FOR CONSTITUTIONAL AND ADMINISTRATIVE HISTORY

a. Manuscripts

The bulk of the manuscript material on the constitutional and administrative history of the Church is simply enormous and is still largely unexplored. Indeed, lack of the most primitive sort of chronological arrangement at most of the bishops' registries makes it physically impossible for a single student to survey the whole field without many years of labour. Besides the innumerable official records, of which the Visitation Records and Consistory Court papers are the most valuable, there are a multitude of letters concerning administrative matters at Hatfield House, at Lambeth Palace, at the British Museum, and in the State Papers Domestic. Many of these are trivial and considered alone are of no value, but in the aggregate they form an exceedingly important record, which will give us definite information about many things when a sufficient number of monographs have exploited its contents in detail. There are no manuscripts for this period at Fulham Palace, almost no records at the Bishop of London's Registry, and few papers of any value at St. Paul's. Puritan zeal plus the Great Fire effectually wiped out the story of the diocese of London. On legal and financial issues, the Exchequer Documents at the Record Office contain a valuable but very miscellaneous and incomplete set of original papers and processes. A number of similar official documents illustrative of routine administration found their way into the volumes of State Papers Domestic. They are badly indexed and not easy to find, but are worth the trouble. On legal and constitutional issues, there are also important papers in the Petyt MSS. in the Inner Temple.

It is perhaps necessary to explain why no account has apparently been taken in the chapters on the condition of the Church of a vast number of papers which seem at first glance trustworthy and pertinent. In all these various respositories, are lists of parishes, contemporary statements of the number of pluralists, of nonresidents, of parishes whose presentation was owned by King or Archbishop, and so on—material which *prima facie* is precisely what we most desire. The great obstacle to its use is, however, its untrustworthiness. The figures are usually so palpably inaccurate and incorrect that they cannot be accepted as even a basis for guess-work. The science of book-keeping was non-existent, and the knowledge of arithmetic so rudimentary, that even such acknowledged financiers as William and Robert Cecil could not be sure of adding a column of twenty figures correctly. The work of clerks, where we can test it, was worse. How, then, can we accept a sheet of figures as accurate, each item of which must necessarily depend upon a dozen computations not given, when the final addition of the twenty is outrageously wrong? We have dozens of statements in detail of the number of benefices in each county or diocese, which vary in total from 8000 to 9500 parishes for all England, and none of which have been correctly added by their compiler. In some cases where the lists nearly coincide the totals reached by contemporaries vary from 500 to 1000. The number of parishes given for the various dioceses differs widely in different lists: one account assigns the diocese of Lincoln 1155 parishes; another gives 1691, adding that there were 1150 preachers in the diocese. The same two lists reversed the proportions for the diocese of Norwich, the first reading 1121, and the second, 733 parishes, while another, possessed, for all we could tell from its face, of equal authority, assigns Norwich 1421. Yet in these instances, facts were in question which should have been as accurately and easily ascertained in official circles as anything that could be mentioned, for the number of parishes actually varied very little between 1530 and 1640. If contemporaries could not agree on the number of parishes in England, how can we expect them to provide us with uniform and accurate estimates on such admittedly debatable and difficult matters as the number of preachers, pluralists, nonresidents, and impropriators?

The contemporary figures besides their arithmetical faults are manifestly incomplete. A paper in Additional MSS. 14289, f. 115-123, for instance, which purports to give the number of benefices which the King controlled, sets the total number of cures in the diocese of Lincoln at 328, which we know to be only a portion of the whole, so that its figure of benefices under royal control must necessarily be wrong. Another paper allots the King 29 benefices for all England. While these are extreme illustrations, they by no means stand alone.

Quite as troublesome and perplexing is the general lack of dates for all these papers of statistics. Nor can they be dated by the usual recourse to Le Neve, Henessey, or Foster. As Le Neve includes only the higher clergy, as Henessey and Newcourt are limited to the diocese of London, while Foster and Cooper have to do only with collegians, all are manifestly of small value for dating lists of purely parochial clergy, for lists in all dioceses except London, and for men of whom the great majority never saw either university. There are other more cogent objections to most of these lists, which, if *prima facie* accurate, would have still to be used with great care. Some lists cover the dioceses, others concern only counties, and, as is self evident, the two by no means coincide. What, too, was meant by a parish, any benefice with cure of souls; any to which a right of presentation existed and to which a stipend was attached; every one which was served by a separate clergyman, with the omission from the count of all cures held in plurality, of those legally united or merged, and of all vacant cures? In other words, are we counting men or positions, and in the former case do all situations in the Church count as benefices—curacies, lectureships, readerships, private chaplaincies, licensed preachers without fixed abode, and so on. Are the cathedral clergy and episcopal officers counted or not where the comparative statistics of learned and ignorant men are given? Are their incomes also reckoned in the general total of the diocese? Does a rector holding two benefices count as two men or as one? The Bishop of Llandaff and the Bishop of Rochester both held some eight or ten rectories in commendam: do their qualifications appear in the statistics or are those of their curates given?

We read statements of ecclesiastical incomes, and are usually not sure whether the gross or net income is before us. Probably we may safely assume in most cases that, unless something is said to the contrary, it is the gross income, but we would rather know than be forced to guess.

With some few exceptions, the whole of this material has been rejected as worthless and misleading. From its statements anything at all can be "proved" about the condition of the Church and of the clergy. It supports both sides of nearly every argument with nearly an equal amount of material. No doubt some of it was produced by controversialists on purpose to mislead the other party, but the efficient cause of most of these hideous blunders lay in ignorance of the simplest processes of arithmetic.

Of the documents left after these sweeping conclusions, the statements of bishops and other clergy to the Privy Council or to the archbishop seem always more trustworthy in regard to the state of Church and clergy than the complaints of either Puritan or Catholic. The bishop was no doubt a prejudiced witness in favour of the Church, but *é fortiori* the Puritans and Catholics were prejudiced against it. If we never accept any testimony except that of a man *unlikely* to be prejudiced, we shall have very little indeed to work with, for every contemporary might have been and usually was prejudiced on one side or the other. The bishop, however, was certainly in a position to know the facts, and, whatever the eagerness of Puritans and Catholics to tell all they knew, we have as yet to demonstrate that they knew anything to tell, or had even reasonably good opportunities for acquiring any information, supposing that they sought diligently for it. Moreover, the bishop's reports to the Privy Council or to the archbishop for transmission to the Privy Council were probably as accurate as he could make them; that body rewarded mendacity and concealment with severe and speedy punishment. The bishop's clergy lists and consignation books may be wrong, and they are certainly in many ways incomplete and fragmentary, but he was the person who should have known, and, whatever their shortcomings, his records are the best evidence we possess. From them, then, the figures and tables cited in the text have been for the most part compiled. Those who wish to verify the present writer's results should bear in mind that few people who are required to fit into a few fixed categories a very large number of individual cases, will spontaneously adopt precisely the same classification, and that therefore a slight variation in the count must be expected. In going through page after page of musty paper books closely covered with semi-illegible writing, it is easy to skip an entry, and the writer fears, that despite his care, certain minor inaccuracies have crept in. The general result, however, he ventures to believe will stand. After all, in so difficult a question as the condition of any institution in the sixteenth century, it may well be doubted whether the past has left us any records that will yield after any amount of work and study, more than comparatively general and confessedly incomplete approximations of the truth.

b. Printed Books

SPARROW, ANTHONY. A COLLECTION OF ARTICLES, INJUNCTIONS, CANONS. WITH OTHER PUBLICK RECORDS OF THE CHURCH OF ENGLAND. . . . PUBLISHED TO VINDICATE THE CHURCH.
London, 1661, 4°; 1671, 4°; 1675, 4°; 1684, 4°.

A remarkable work at the time it was made, it has been largely superceded by Wilkins and Cardwell.

WILKINS, DAVID. CONCILIA MAGNAE BRITANNIAE ET HIBERNIAE A SYNODO VEROLAMIENSI A. D. CCCCXLVI AD LONDINENSEM A. D., CIƆIƆCCXVII. ACCEDUNT CONSTITUTIONES ET ALIA AD HISTORIAM ECCLESIAE ANGLICANAE SPECTANTIA. a DAVID WILKINS, S. T. P., Archidiacono Suffolciensi, et Canonico Cantuariensi, collecta.
Londoni, 1738. folio.

This remarkable work is composed wholly of documents, most of which have been taken from the Archiepiscopal Registers at Lambeth. He also used Spelman's and Sparrow's collections, and Strype's Works which had just appeared. He had some manuscript material, chiefly from Sancroft's MSS. in the Bodleian, and also manuscript notes of Milo Smith on the sessions of Convocation which are invaluable since the loss of the Register of debates in that body. The work has been very carefully done, and although the spelling has been often modernised, the documents have been very accurately printed. A comparison with the Registers of Whitgift and Bancroft shows that nothing material has been omitted. In fact, the book is as nearly trustworthy as any book of that stamp can ever be. It does not contain, however, by any means a complete set of documents for any period of any sort, least of all for the period 1583-1610.

CARDWELL, EDWARD. DOCUMENTARY ANNALS OF THE REFORMED CHURCH OF ENGLAND BEING A COLLECTION OF INJUNCTIONS, DECLARATIONS, ORDERS, ARTICLES OF INQUIRY, ETC. FROM THE YEAR 1546 TO THE YEAR 1716. WITH NOTES HISTORICAL AND EXPLANATORY.

Two volumes, Oxford, 1839, 8°.
Second edition, Oxford, 1842, 8°.

SYNODALIA. A COLLECTION OF ARTICLES OF RELIGION, CANONS AND PROCEEDINGS OF CONVOCATION IN THE PROVINCE OF CANTERBURY FROM THE YEAR 1547 TO THE YEAR 1717, WITH NOTES.
2 volumes. Oxford, 1842. 8°.

A HISTORY OF CONFERENCES AND OTHER PROCEEDINGS CONNECTED WITH THE REVISION OF THE BOOK OF COMMON PRAYER FROM THE YEAR 1558 TO THE YEAR 1690. With appendix.
Oxford, 1840. 8°.

The size and expense of Wilkins's book militated against its usefulness. Cardwell reprinted much the same material, with some additions, in smaller volumes. He reprinted some further material from Strype and Fuller, and added still more from manuscript. On the whole his books are all well done and are extremely useful.

DAVEY, W. H. ARTICULI ECCLESIAE ANGLICANAE, OR THE SEVERAL EDITIONS OF THE ARTICLES OF THE CHURCH OF ENGLAND AS AGREED UPON IN CONVOCATION AND SET FORTH BY ROYAL AUTHORITY DURING THE REIGNS OF KING EDWARD VI AND QUEEN ELIZABETH, ARRANGED IN ONE COMPARATIVE VIEW.
London, 1861.

COLLINS, W. C. CANONS OF 1571 IN ENGLISH AND LATIN, WITH NOTES.

Publications of the Church Historical Society, no. 40. London, 1889.

The notes are meagre and not very valuable.

THE ORDERS OF 1586.

A bibliography of these Orders is in Gorham, *Reformation Gleanings,* 496-497.

THE CANONS OF 1604.

EDITIONS: 1604, in English and in Latin; 1612; 1616; 1628; 1633; 1662; 1665; 1673; 1676; 1678; 1683.

1869. With historical introduction and notes critical and explanatory, by Rev. C. H. Davis.

The notes relate rather to the later history of the Canons than to their origin; lack comprehensiveness, and are not really explanatory of either legal or constitutional difficulties.

1874. The Constitutions of the Church of England referred to their original sources and illustrated with explanatory notes, by E. C. W. Mackenzie.

He has not been careful to draw the line between what is really precedent and what is merely an example of a similar sort of regulation. Some of his comparisons are over ingenious and unconvincing. Like that of Mr. Davis, his work is rather superficial.

JOYCE, J. W. ACTS OF THE CHURCH, 1531-1885. THE CHURCH OF ENGLAND HER OWN REFORMER, AS TESTIFIED BY THE RECORDS OF HER CONVOCATIONS. WITH APPENDIX CONTAINING LEGAL INSTRUMENTS ANCIENT AND MODERN.

London, 1886.

ENGLAND'S SACRED SYNODS. A CONSTITUTIONAL HISTORY OF THE CONVOCATIONS OF THE CLERGY.

London, 1855.

LATHBURY, THOMAS. HISTORY OF CONVOCATION TO 1742.

First edition, London, 1842.
Second edition, London, 1853.

ENGLAND'S INDEPENDENCY UPON THE PAPAL POWER HISTORICALLY AND JUDICIALLY STATED BY SIR J(ohn) D(avies) and SIR E(dward) C(oke).
London, 1674.

ANDREWES, LAUNCELOT. THE LIMITS OF THE ROYAL SUPREMACY IN THE CHURCH OF ENGLAND.

London, 1877, 1884. Extracted and translated from the Tortura Torti, London, 1609.

AMOS, A. OBSERVATIONS ON THE STATUTES OF THE REFORMATION PARLIAMENT IN THE REIGN OF KING HENRY VIII.
London, and Cambridge, 1859.

FULLER, M. J. THE THRONE OF CANTERBURY, OR THE ARCHBISHOP'S JURISDICTION.
London, 1891.

THE ELIZABETHAN ACT OF UNIFORMITY.
London, 1899.

THE COURT OF FINAL APPEAL, OR THE APPELLATE JURISDICTION OF THE CROWN IN ECCLESIASTICAL CAUSES.
London, 1865. (no index.)

These three books by Fuller are a sample of modern controversial literature, and while they evince no great learning nor acumen and are on the whole uncritical, they do give the student some idea of the position which great parties of the present day take upon some issues of history.

HUTTON, S. F. THE PRIMACY OF ENGLAND.
Oxford, 1899. (no index.)

Contains reprints of some important documents, and considerable detail on titles, precedence, and a number of minor matters.

ABRAHAM, W. H. CHURCH AND STATE IN ENGLAND.
London, 1905.

III. MATERIALS FOR THE HISTORY OF THE PURITANS IN ENGLAND

a. Manuscripts

The manuscripts for Puritan history are voluminous in number but not correspondingly valuable. The bulk of them are connected in some way with the sufferings of the sect, actual or anticipated, and are mainly the reiteration of much the same thing. There are scores of copies of the same petition or of nearly the same petition; there are hundreds of letters retailing very much the same grievances to different officers of state; the charges against the bishops are equally numerous and equally stereotyped. But solid first hand material for the narrative and constitutional history of the party is more difficult to find. The former type of material abounds in the Morrice and Baker MSS., in the State Papers Domestic, and in the Additional MSS. at the British Museum. The latter is to be found in small quantities amidst the chaff of these repositories, and more plentifully in the Gurney, Hatfield, and Sloane MSS. Much is to be gleaned from the Visitation Records, though of a disconnected nature. There are a few valuable papers at the Bodleian Library, Oxford. Much valuable information may be sifted out of the numerous rare tracts preserved at the Museum and Bodleian. The most tiresome theological argument and the most commonplace petition often contains a nugget of fact or a list of names well worth the time and trouble to read it.

b. Printed Books

The printed histories of the Puritans are for the most part uncritical, and based almost entirely upon one or two prototypes. The lengthy list printed by Dexter in his *Congregationalism as seen in its literature* makes the inclusion here of more than a few titles a work of supererogation. First and foremost stands

NEAL, DANIEL. THE HISTORY OF THE PURITANS OR PROTESTANT NONCONFORMISTS, FROM 1517 TO 1688, COMPRISING AN ACCOUNT OF THEIR PRINCIPLES.

Four volumes, London, 1732-1738. 8°.
Second edition, corrected, London, 1754, 2 volumes, 4°. Same, Dublin 1755, 4 volumes. New edition, revised, corrected, and enlarged by J. Toulmin. To which are prefixed, some memoirs of the life and writings of the author. Five volumes, Bath, 1793-1797. 8°.
Reprinted, Portsmouth, 1818; London, 1822; and (in 2 volumes) New York, 1848.

Before Neal's work had fully appeared, it was attacked by Z. Gray in his *Vindication of the Government, Doctrine, and Worship of the Church of England . . . against the injurious Reflections of Mr. Neale in his late History of the Puritans,* and in a long series of more detailed criticisms called *Impartial Examinations.* In judging Neal, it is necessary to remember that his work has been greeted with the most violent opposition on the part of every one except those of his own party. On the whole the critical historian is moved to side rather with Neal's critics than with his admirers, but from entirely different reasons.

So far as we can learn from his brief footnotes to authorities and his vague references and from an intensive study of the book itself, it was based chiefly on Morrice's collections now in Dr. Williams's Library. Neal also used some of Baker's transcripts, and some other manuscript material not now traceable. He of course had Fuller, Collier, and Strype, but considered them prejudiced and used them less than he might have; they gave the "Bishops' side" and he felt his evidence was better. Judging his work simply upon the way he used the materials he had, it is unscholarly and uncritical. His documents are inaccurately printed when he gives them in full; when given in abstract (and that is often), he omits much of value; when paraphrased, he sometimes almost destroys the sense. Based exclusively upon Puritan sources, his view of the subject is one sided. He pays little attention to constitutional development or relations, except in a superficial and annalistic way, and confines himself chiefly to martyrology, and a list (with copious citations) of petitions and examinations in which the Puritan was "abused." He prints however some documents of importance, which, though inaccurate in little things, are in the main correct, and which are not accessible except in manuscript or equally inaccessible tracts. With all its faults, no student can afford to neglect the book, for its place in the history of the subject is great, and its influence upon historians and especially upon subsequent thinking has been vast. Most secondary histories of Puritanism are Neal plus a little of something else.

BROOK, BENJ. LIVES OF THE PURITANS.
London, 1813, 3 volumes.

This book is second only to Neal in place and influence. Its chief source seems to have been Morrice's voluminous biographical collections (is not Morrice MSS. M, the "MSS Register" to which Brook so often refers?), plus Clark's Lives of the Puritans in manuscript, and some few original letter books and diaries. The information he gives, is, of course, best in the period subsequent to 1610 for which Morrice was himself a contemporary and apparently well posted. Brook was however anxious to make his total number of Puritans large, and in so doing included a good many names without sufficient warrant. He was furthermore utterly uncritical: every man is either "this learned man" or "this admirable scholar," or "this eloquent preacher."

In many cases the biographical details are meagre and frequently based on hearsay and rumour. Brook's fault, however, lay not so much in colouring too highly what he knew about, for in describing the careers of several of the better known men where he had abundant data to work from, his statements are temperate and by no means more than the evidence warrants; his greatest weakness lay in assuming that where he knew little or nothing, the character and ability of the Puritan was equally high. Sometimes when he says he knows very little about a man, he goes on to describe him in terms which only a great deal of positive evidence could warrant. Untrustworthy as it is, the book contains a good deal of first hand evidence from letters and diaries, and regarding some of the lesser known men gives the only evidence we have.

PRICE, THOMAS. THE HISTORY OF PROTESTANT NON-CONFORMITY IN ENGLAND FROM THE REFORMATION UNDER HENRY VIII.
2 volumes, London, 1836-1838.

HANBURY, BENJAMIN. HISTORICAL MEMORIALS RELATING TO THE INDEPENDENTS OR CONGREGATIONALISTS FROM THEIR RISE TO THE RESTORATION OF THE MONARCHY.
3 volumes, London, 1839.

MARSDEN, J. B. HISTORY OF THE EARLY PURITANS FROM THE REFORMATION TO 1642.
Second edition, London, 1853.
An excellent statement of the traditional Puritan view.

HEYWOOD, J. and WRIGHT, T. CAMBRIDGE TRANSACTIONS DURING PURITAN CONTROVERSIES OF THE 16TH and 17TH CENTURIES.
2 volumes, London, 1854.

HOPKINS, S. THE PURITANS DURING THE REIGNS OF EDWARD VI AND ELIZABETH.
3 volumes, Boston, 1859.
A bigoted New England account, full of florid rhetoric.

TULLOCH, JOHN. ENGLISH PURITANISM AND ITS LEADERS.
London, 1861.

DAVIDS, T. W. ANNALS OF EVANGELICAL NONCONFORMITY IN THE COUNTY OF ESSEX. . .
London, 1863.

WADDINGTON, J. HISTORICAL PAPERS (First Series) CONGREGATIONAL MARTYRS.
1861.

THE TRACK OF THE HIDDEN CHURCH, OR THE SPRINGS OF THE PURITAN MOVEMENT, 1559-1620.
Boston, U. S. 1863.

CONGREGATIONAL HISTORY.
London, 1869-1880. 5 volumes.

SURREY CONGREGATIONAL HISTORY.
London, 1866.

Without question, Waddington's name must stand next to Neal's as a maker of Puritan history. With all Neal's enthusiasm, he was vastly better equipped, was more diligent, and more critical. He wrote also after the opening of the Public Archives to literary research, and after much had been done to render it less difficult. He added much information from manuscript, therefore, and used the printed books more carefully. He was the first consistently to trace the movement as a movement and to make Puritan history more than a series of martyristic annals. Less active in his ways of showing it, he was quite as intolerant as Neal of all except his own sect, and was convinced that Congregationalism was the candle under the bushel which should light the whole house. We do not yet know where the balance lies in this struggle between the Church and the sects, but surely no historian should start with a preconceived notion.

DEXTER, H. M. CONGREGATIONALISM AS SEEN IN ITS LITERATURE.
New York and Boston, 1880.

DEXTER, H. M. and DEXTER, MORTON, THE ENGLAND AND HOLLAND OF THE PILGRIMS.
New York, 1905.

There can be no doubt that Mr. Dexter was the most erudite of Puritan writers and he certainly placed all scholars under a deep debt of gratitude to him. His critical attitude, his untiring zeal, his eagerness to be fair, all mark a high standard of historical scholarship. His bibliographical knowledge was unsurpassed. But one cannot help feeling that Mr. Dexter was more familiar with the titles and outside appearance of books, than he was with their contents. He was the first to bring Robert Browne into a clear light, but while he probably did not over-emphasize his importance in the development of the tenets later known as Congregationalism, he perhaps exaggerated his influence on the ideas and fortunes of the general party. Again, Mr. Dexter's interest lay more in America than in England, and his anxiety to make clear the causes for emigration turned his attention a little from the topics most vital to the Puritans who stayed in England, with whom alone the history of the English Church has to do. Mr. Dexter's work, therefore, was not intended to be and should not be considered as giving more than an account of one small part of Puritan history.

BURRAGE, CHAMPLIN. THE TRUE STORY OF ROBERT BROWNE, FATHER OF CONGREGATIONALISM, INCLUDING VARIOUS POINTS HITHERTO UNKNOWN OR MISUNDERSTOOD.
Oxford, 1906.

c. Contemporary Tracts

Despite the exhaustive list of contemporary tracts connected with Puritanism given by Mr. Dexter in his *Congregationalism,* and indeed because of the length of his list, it has seemed wise to include in this bibliography a selected number of the most valuable tracts. The titles of most of these are so long that considerations of space have compelled their abridgement.

1582. R. BROWNE. A TREATISE OF REFORMATION WITHOUT TARYING FOR ANIE.

1584. AN ABSTRACTE OF CERTAIN ACTES OF PARLEMENT. . .

1584. R. BANCROFT. AN ANSWER TO THE TWO FIRST AND PRINCIPAL TREATISES . . . OF AN ABSTRACT OF CERTEINE ACTS OF PARLEMENT. . .

1584. A DIALOGUE CONCERNING THE STRIFE OF OUR CHURCHE. . .

1585. T. BILSON. THE TRUE DIFFERENCE BETWEEN CHRISTIAN SUBJECTION AND UNCHRISTIAN REBELLION. . .

1590. J. PENRY (?) AN HUMBLE MOTION . . . HOW NECESSARIE IT WERE FOR THE GOOD OF THIS LANDE, AND THE QUEENES MAIESTIES SAFETIE, THAT ECCLESIASTICALL DISCIPLINE WERE REFORMED AFTER THE WORDE OF GOD, AND HOW EASILY THERE MIGHT BE PROUISION FOR A LEARNED MINISTERY.
(also 1599, 1641.)

1590. A PARTE OF A REGISTER.
(contains many very valuable tracts.)

1591. M. SUTCLIFFE. A TREATISE OF ECCLESIASTICALL DISCIPLINE.

BIBLIOGRAPHY

1591. R. COSIN. AN APOLOGY OF AND FOR SUNDRY PROCEEDINGS BY JURISDICTION ECCLESIASTICALL. . .

1592. R. COSIN. CONSPIRACIE FOR PRETENDED REFORMATION, VIZ. PRESBYTERIALL DISCIPLINE. . .

1593. R. BANCROFT. DANGEROUS POSITIONS. . .

1593. R. BANCROFT. A SURVEY OF THE PRETENDED HOLY DISCIPLINE. . .

1602. I. NICHOLS. THE PLEA OF THE INNOCENT.

1604. W. COUELL. A MODEST AND REASONABLE EXAMINATION OF SOME THINGS IN . . . A BOOKE CALLED THE PLEA OF THE INNOCENT.

1602. I. NICHOLS. ABRAHAM'S FAITH: THAT IS THE OLDE RELIGION, WHEREIN IS TAUGHT THAT THE RELIGION NOW PUBLICKLY TAUGHT AND DEFENDED IN THE CHURCH OF ENGLAND, IS THE ONELY TRUE CATHOLIKE, AUNCIENT AND UNCHANGEABLE FAITH OF GOD'S ELECT.

1603. W. COUELL. A JUST . . . DEFENCE OF THE FIVE BOOKS OF ECCLESIASTICAL POLICIE WRITTEN BY MR. RICHARD HOOKER.

1603. THE ANSWERE OF THE VICE CHANCELOUR, THE DOCTORS, BOTH THE PROCTORS, AND OTHER THE HEADS OF HOUSES IN THE UNIVERSITY OF OXFORD . . . TO THE HUMBLE PETITION OF THE MINISTERS OF THE CHURCH OF ENGLAND DESIRING REFORMATION OF CERTAINE CEREMONIES AND ABUSES OF THE CHURCH. . .

1604. W. BARLOW. THE SUMME AND SUBSTANCE OF THE CONFERENCE . . .AT HAMPTON COURT. . .
(two editions in 1604; one in 1605; 1612; 1625; 1638; 1804; also reprinted in *The Phoenix,* 1707; the *Churchman's Remembrancer,* no. IV, 1805; in Cardwell's *History of Conferences;* in extract in Wilkins, *Concilia,* and elsewhere.)

1604. W. STOUGHTON. AN ASSERTION FOR TRUE AND CHRISTIAN CHURCH POLICIE. . . .

1604. THE REMOOUALL OF CERTAINE IMPUTATIONS LAID UPON THE MINISTERS OF DEUON AND CORNWALL BY ONE M. T. H(UTTON) AND IN THEM UPON ALL OTHER MINISTERS ELS WHERE, REFUSING TO SUBSCRIBE.

1604. H. JACOBS. REASONS TAKEN OUT OF GOD'S WORD . . . PROUING A NECESSITIE OF REFORMING OUR CHURCHES IN ENGLAND.

1605. AN ABRIDGEMENT OF THAT BOOKE WHICH THE MINISTERS OF LINCOLN DIOCESS DELIVERED TO HIS MAIESTIE UPON THE FIRST OF DECEMBER LAST. . .

(1605.) THE ABOLISHING OF THE BOOKE OF COMMON PRAYER, BY REASON OF ABOVE FIFTY GROSSE CORRUPTIONS IN IT. . . BEING THE SUBSTANCE OF A BOOKE WHICH THE MINISTERS OF LINCOLN DIOCESS DELIVERED TO KING IAMES, THE FIRST OF DECEMBER, 1605.
(Published in 1641.)

1605. CERTAINE DEMANDES WITH THEIR GROUNDES DRAWNE OUT OF HOLY WRIT. . .

1605. CERTAIN CONSIDERATIONS DRAWNE FROM THE CANONS OF THE LAST SINOD, AND OTHER THE KINGS ECCLESIASTICALL AND STATUTE LAW. . . .

1605. S. HIERON. A SHORT DIALOGUE, PROVING THAT THE CEREMONYES AND SOME OTHER CORRUPTIONS NOW IN QUESTION ARE DEFENDED BY NO OTHER ARGUMENTS THAN SUCH AS THE PAPISTS HAUE HERETOFORE USED.

1605. T. HUTTON. REASONS FOR REFUSAL OF SUBSCRIPTION TO THE BOOKE OF COMMON PRAYER UNDER THE HANDES OF CERTAINE MINISTERS OF DEVON AND CORNWALL. . . .

1605. G. POWELL. THE UNLAWFULNESS AND DANGER OF TOLERATION OF DIUERS RELIGIONS. . .

1605. F. MASON. THE AUTHORITY OF THE CHURCH IN MAKING CANONS AND CONSTITUTIONS CONCERNING THINGS INDIFFERENT AND THE OBEDIENCE THERETO REQUIRED.

1605. W. BRADSHAW. A PROPOSITION CONCERNING KNEELING IN THE VERY ACT OF RECEIVING.

1605. ENGLISH PURITANISME, CONTAINEING THE MAINE OPINIONS OF THE RIGIDEST SORT OF THOSE THAT ARE CALLED PURITANES IN THE REALME OF ENGLAND.

1605. A TREATISE OF THE NATURE AND USE OF THINGS INDIFFERENT. TENDING TO PROUE THAT THE CEREMONIES IN PRESENT CONTROUERSIE . . . ARE NEITHER IN NATURE OR USE INDIFFERENT.

1606. H. JACOBS. A CHRISTIAN AND MODEST OFFER OF A MOST INDIFFERENT CONFERENCE OR DISPUTATION ABOUT THE MAINE AND PRINCIPALL CONTROVERSIES BETWIXT THE PRELATS, AND THE LATE SILENCED AND DEPRIVED MINISTERS IN ENGLAND.

1606. A MYLD AND IUST DEFENCE OF CERTEYNE ARGUMENTS, AT THE LAST SESSION OF PARLIAMENT DIRECTED TO THAT MOST HONORABLE HIGH COURT IN BEHALFE OF THE MINISTERS SUSPENDED AND DEPRIVED.

1606. CERTAINE ARGUMENTS TO PERSWADE AND PROVOKE THE MOST HONORABLE AND HIGH COURT OF PARLIAMENT . . . TO PROMOTE AND ADVANCE THE SINCERE MINISTERS OF THE GOSPELL. . . .

1606. (?) DIALOGUE BETWEEN AN OLD PROTESTANT AND A NEW FORMALIST, WITH REASONS WHY PREACHERS WHO REFUSE SUBSCRIPTION SHOULD NOT BE REMOVED.

1606. R. FIELD. OF THE CHURCH, FOUR BOOKES.
(Fifth Book issued 1610.)

1606. W. COVELL. A BRIEFE ANSWER UNTO CERTAINE REASONS BY WAY OF AN APOLOGIE ETC. BY MR. IOHN BURGES. . .

1606. G. POWEL. A CONSIDERATION OF THE DEPRIUED AND SILENCED MINISTERS ARGUMENTS FOR THEIR RESTITUTION TO THE USE AND LIBERTIE OF THEIR MINISTERIE. . .

1607. S. HIERON. A DEFENCE OF THE MINISTERS REASONS FOR REFUSAL OF SUBSCRIPTION TO THE BOOKE OF COMMON PRAYER AND OF CONFORMITY IN ANSWER TO MR. T. HUTTON, DR. W. COVEL, AND DR. T. SPARKE.

1607. T. WHETENHALL. A DISCOURSE OF THE ABUSES NOW IN QUESTION IN THE CHURCHES OF CHRIST.

1607. F. MASON. THE AUTHORITIE OF THE CHURCH IN MAKING CANONS AND CONSTITUTIONS CONCERNING THINGS INDIFFERENT AND THE OBEDIENCE THERETO REQUIRED.

1607. T. ROGERS. THE FAITH, DOCTRINE, AND RELIGION, PROFESSED AND PROTECTED IN THE REALME OF ENGLAND . . . EXPRESSED IN 39 ARTICLES . . . AGREED UPON . . . IN 1562 AND 1604. . . .

1607. T. SPARKE. A BROTHERLY PERSUASION TO UNITY AND UNIFORMITY IN JUDGMENT AND PRACTICE TOUCHING THE RECEIVED AND PRESENT ECCLESIASTICAL GOVERNMENT AND THE AUTHORIZED CEREMONIES.

1607. SIR. T. RIDLEY. A VIEW OF THE CIVILE AND ECCLESIASTICALL LAW, AND WHEREIN THE PRACTICE OF THEM IS STREITNED AND MAY BE RELIEUED WITHIN THIS LAND.

1608. G. DOWNAME. TWO SERMONS, THE ONE COMMENDING THE MINISTERIE IN GENERALL. THE OTHER DEFENDING THE OFFICE OF BISHOPS IN PARTICULAR.

IV. MATERIALS FOR THE HISTORY OF THE CATHOLICS IN ENGLAND

a. Manuscripts

On few topics connected with English Church History is there a larger bulk of material than upon Catholic problems, and it must be sorrowfully added that on no other topic is so large a proportion of it comparatively valueless. The sort of happening in which we are most interested left little or no record, while the details of the capture of some priest or the finding of some worthless tract have been preserved to us with provoking accuracy. True, the sort of happening we are most anxious to investigate was precisely the sort which was least likely to leave a record, or upon which it was highly inexpedient to commit thoughts and plans to paper, and still more indiscreet to preserve those papers. Furthermore a large amount of false information was intentionally disseminated, not only by informers who hoped to get paid for what they thought the State wanted to find, but by the State itself, and by Jesuits and Seculars, Churchmen and Puritans. The amount of guess-work, gossip, and hearsay written down and preserved is vast and utterly unreliable.

It is also unfortunate that the recent opening of manuscript archives to students should have produced a state of mind which treats any manuscript authority as *prima facie* better evidence than the printed material. On the history of the Catholics in England this is by no means true. The superior accessibility of the Record Office and of the British Museum coupled to the general excellence of the *Calendars of State Papers Domestic* has fostered an opinion that those repositories contain a representative selection of documents which will in the main be sufficient for the student's purposes. However true that may be in some branches of English history, it is by no means true in Catholic history, for in those archives will be found rather the illustrative material than the documents of greatest value. The student should also guard carefully against making inferences regarding all England from letters and documents written at London which do not expressly state that their information is of broad application. Conditions in London were not then, any more than they are now, typical of the country districts. The voluminous correspondence of ambassadors and newswriters preserved in the Simancas, Paris, Roman, and Venetian Transcripts and Calendars is demonstrably false on many points and always must be used with great caution. Certainly, the longer one studies the material on Catholic history, the clearer one sees that any statement on any subject from any point of view can be supported by some manuscript evidence which will at first sight seem trustworthy. Even the holograph letters of important characters are apt to be misleading when taken alone. The only safety lies in the cautious use of all available information, printed and manuscript, good, bad, and indifferent, for one can rarely tell into which category a document will fall until his studies approach completion. After all, the point most in dispute, then and now, is not what happened and who did it, where one claims one thing and the other denies it (the Gunpowder Plot being a notable exception), but a matter of personal attitude toward a certain sequence of admitted facts, a question not of their actuality, but of their significance. Which party was most to blame, which was most uncharitable in its deeds and most malignant in its aspersions of the other, which was the better course for England and the world in general, the restoration of Catholicism or Bancroft's compromise? On matters of general policy concerning circumstances in which so many threads of policy are involved, where so many interests are concerned, it is safe to assume that no contemporary, whatever his capacity or experience was capable of arriving at as adequate a comprehension of the situation as we now can. Everybody's statements must be scrutinized on every subject but particularly on the history of the Catholics.

A great mass of papers on the enforcing of the penal laws have been preserved in the Recusant Rolls and in the State Papers Domestic at the Record Office, in the Cæsar Papers (Lansdowne MSS.) at the British Museum, and in the Stonyhurst MSS. and elsewhere. Information of great value in regard to the exact degree of enforcement is to be found in the local judicial archives, though, as the enforcement of the penal laws (like their enactment) was the work of the State, the ecclesiastical officials had very little to do with it. In connection with this work and with the various plots, were taken a great many depositions of suspects, or persons arrested, of priests caught at Dover and elsewhere, which concern every conceivable question of interest to Catholics or to the State, and express every conceivable variety and degree of opinion about them. The information is usually trivial and the "news" exceedingly untrustworthy. These categories comprehend the great bulk of material on Catholic history, but concern rather their relations to the State than to the Church or to each other. As yet nothing approaching a complete investigation of it has been made, and, though the task involves an enormous amount of labour, it is to be hoped that some one will soon read *all* these papers and so place himself in a position to tell us which are valuable. Certainly to trust any one or any ten is folly.

The amount of material for the constitutional history of the Catholics in England, their relations to each other and to the English Church as distinguished from the State, is by no means as considerable in bulk but is considerably more trustworthy. The most valuable collections are in the Petyt MSS. and Stonyhurst

MSS., and the papers preserved in various archives at Rome, Turin, and Naples. An invaluable and in the main trustworthy series of letters between Bancroft, Cecil, and the priests, is in the collection of the Marquis of Salisbury, Hatfield House, Herts. Most of these must be used in manuscript, for the Calendar of the Historical Manuscripts Commission has not yet reached the year 1610. As far as it has been published, the letters are given only in abstract and many important details have been necessarily omitted. It must be conceded however that this calendar is one of the best of an excellent series.

b. Printed Books

The excellent bibliographies of books recently published on the Catholic history of this period make a lengthy bibliography unnecessary. Many contemporary tracts and more recent publications have been listed with interesting comment by A. Jessop in his *One Generation of a Norfolk House,* xiii-xxiii. A more exhaustive list which contains most of the important tracts relating to this period with valuable bibliographical information and excellent comment is in the appendix to the Introduction of T. G. Law's *Jesuits and Seculars.* John Gee, in *The Foot out of the Snare,* (London, 1624, 4°), listed a great many contemporary tracts. E. L. Taunton's *History of the Jesuits in England* has an appendix which gives some information about the tracts of Robert Parsons. *The Dublin Review, The Month, The Rambler* contain from time to time valuable articles relating to this period by leading Catholic writers. Joseph Gillow's *Biographical Dictionary of the English Catholics from the Breach with Rome in* 1534 *to the present time* (London, 1885) is a useful book and in most cases accurate. For the lives of the lesser known men, it is about all we have. *The Dictionary of National Biography* contains valuable articles.

DODD, CHARLES, THE CHURCH HISTORY OF ENGLAND FROM 1500-1688 CHIEFLY WITH REGARD TO CATHOLICKES.

Three volumes, folio, Brussels, 1737, 1739, 1742, (printed in London). Edited with notes, etc, by M. A. Tierney. London, 1839-1843.

The appearance of Burnet's *History of the Reformation,* and Strype's *Works,* both of which took the side of the Established Church, started the pens of the opposing parties. Daniel Neal championed the Puritans while at the same time the fortunes of the Catholics were described by the Reverend Hugh Tootle, who preferred to write under the more euphonious pseudonym of Charles Dodd. Tootle had a good deal of assistance in procuring material both from official and from private Catholic archives and produced a book which will easily bear comparison with the work of his contemporaries. If less learned than Strype, he was at once more erudite and more impartial than Neal, though both were prejudiced enough from a modern critical standpoint. There was however much that he failed to discover, and he made many mistakes, which led to a new edition by M. A. Tierney, during the second orgy of ecclesiastical researches in the 1830's and '40's. Tierney practically remade the book and his footnotes, containing quotation from many manuscript sources, are now the most valuable part of it. He had access to the Stonyhurst MSS. of many of which he made good use, though he by no means exhausted that rich collection, but his chief source of additional information came from manuscripts which he himself possessed, many of which he declares were the originals. Where these are is not now known, and inasmuch as they furnish us practically our only information on many points, Tierney's book becomes in the meantime a source of high value. Our confidence is increased by the fact that he seems to have handled his documents carefully, and reproduced them faithfully. His arrangement of them, however, is often confused, and as a narrative account of the subject the book even as remade is of little interest and no value. Tierney's volumes are a mine of information, not a history. As a secular priest, he possessed some animus against the Jesuits which not only in his comments, but in his selection of material, made pretty distinct appearance. Considering how long ago he wrote, and his attempt to be fair even to Churchmen and Puritans, his History is as nearly invaluable to the student as any one book on the period, and is as nearly trustworthy (as far as we can now tell) as any of the books of his time.

CHALLONER, RICHARD. MEMOIRS OF MISSIONARY PRIESTS.

Many editions, the best, edited by T. G. Law, was published at Manchester, 1878.

A contemporary of Tootle, Challoner was not by any means as well informed and was far more openly a partisan. He attempted to depict vividly the sufferings of the priests, to stir the Catholics to commiseration by his comments, and incidentally tried to blacken the character of a good many English bishops, particularly Bancroft's. Much of his "information" is hearsay and rumour; some of it is vulgar scandal; none of it is worthy of credence without corroboration. His book holds, however, a place of some importance in the list of volumes on English history written by Catholics.

LINGARD, JOHN. HISTORY OF ENGLAND.
10 volumes, London, 1819-1830. (Many editions).

In his eager search for truth and his calm impartiality, Lingard has never been surpassed by a Catholic writer and rarely equalled by a Protestant. His volumes on this period, while not very detailed, and in many ways deficient from lack of material since opened to students, are still well worth perusal.

MORRIS, JOHN. THE TROUBLES OF OUR CATHOLIC FOREFATHERS RELATED BY THEMSELVES, EDITED BY JOHN MORRIS.
Three Series. London, 1872.

THE CONDITION OF THE CATHOLICS UNDER JAMES I.
London, 1871, 1872, 1881.

Tierney was mainly concerned with the quarrel of the Jesuits and Seculars; Lingard with the general history of England as viewed by Catholic eyes; Morris became the legitimate successor to Challoner, and did the work on a larger scale, and with greater accuracy. The titles of his books are misleading for they are all biographical and contain chiefly martyristic tales of piety and suffering.

FOLEY, HENRY. RECORDS OF THE ENGLISH PROVINCE OF THE SOCIETY OF JESUS.

7 volumes, bound in 11. London, and Roehampton, 1877-1882.

APPENDIX

ENGLISH PROVINCE, S. J. ALPHABETICAL CATALOGUE OF MEMBERS WHO ASSUMED ALIASES OR BY-NAMES, TOGETHER WITH THE SAID ALIASES; BY A MEMBER OF THE SOCIETY.
Roehampton, 1876.

The secular priests had had two efficient workers in Tootle and Tierney before a hand came to write the story from the Jesuit point of view. Henry Foley was a man of middle age when he applied for admission to the Jesuit Order, but being too old to begin the novitiate, he was admitted a lay brother, and was set to work upon the editing of the Jesuit records at Stonyhurst College and elsewhere. He was not a trained historian, and was not even a man of literary capacity, but he brought to the work energy, patience, and good-will. His large volumes are in no sense a history of the Catholics in England, nor a history even of the Jesuit Order in England. In them, a great deal of material has been loosely thrown together, usually in biographical form. Much of it is concerned with the martyrology of the Jesuits, but even here the wheat and the chaff are closely mixed. Long and tedious legends of miracles and saintly deeds are separated by a few pages of really important narrative material. Foley's comments are rarely of any value.

Naturally the lay brother was profoundly impressed by the history of his Order and lacking that long regular training which sharpens the intellect and teaches at the same time self-control, he was neither able to conceal it, or to comprehend the necessity for its control in a historian. His bias affected his choice of documents and to some extent his use of them. Constitutional history he cared little for, compared with the sufferings of the Fathers and the progress of conversions. E. L. Taunton has spoken very disparagingly of Foley's inaccuracy and bias, a criticism largely neutralized by his own sins in those same directions. While no one can say that Foley's work is a complete selection until he has enjoyed all Foley's privileges for seeing material, nor vouch for his entire accuracy without spending months of painful labour verifying documents, such comparisons as the present writer was able to make in an all-too-brief visit at Stonyhurst College show that Foley's omissions were in few cases of any value and in none of considerable significance. The volumes undoubtedly abound in minor errors of spelling, dating, and nomenclature, due less to Foley's intention to conceal the truth than to his lack of a proper knowledge of paleography and of experience in dating doubtful papers. He furthermore had not sufficient acquaintance with the political, constitutional, and social history of the period in general to understand the more subtle clue which the papers often afforded. His *Records* are in many ways deficient and need to be used with great care, the material itself, however carefully reproduced, being often of a highly prejudiced character, but it is hardly fair to charge him with intentional misrepresentation on the basis of faults which Puritans and Churchmen have conspicuously exemplified.

LAW, THOMAS GRAVES. A CALENDAR OF THE ENGLISH MARTYRS OF THE 16TH AND 17TH CENTURIES, WITH AN INTRODUCTION.
London, 1876.

A HISTORICAL SKETCH OF THE CONFLICT BETWEEN JESUITS AND SECULARS IN THE REIGN OF QUEEN ELIZABETH, WITH A REPRINT OF CHRISTOPHER BAGSHAW'S 'TRUE RELATION OF THE FACTION BEGUN AT WISBICH,' AND ILLUSTRATIVE DOCUMENTS.
London and Edinburgh, 1889.

DOCUMENTS ILLUSTRATING CATHOLIC POLICY IN THE REIGN OF JAMES VI.
Publications of the Scottish Historical Society, XV. Edinburgh, 1893.

THE ARCHPRIEST CONTROVERSY. DOCUMENTS RELATING TO THE DISSENTIONS OF THE ROMAN CATHOLIC CLERGY, 1597-1602. EDITED FROM THE PETYT MSS. OF THE INNER TEMPLE.
Camden Society, New Series, 56. Two volumes, Westminster, 1896.

CATHOLIC TRACTATES OF THE SIXTEENTH CENTURY, 1573-1660.
Scottish Text Society, 45.
Edinburgh and London, 1901.

These volumes, written and edited by Mr. Law, contain the most valuable material we have for the period, 1583-1602. He has reprinted Bagshaw's *True Relation* (in the *Jesuits and Seculars*), and the seculars' own accounts of the two appeals to Rome of 1598 and 1602 from the Petyt MSS. (in the *Archpriest Controversy*) together with a very considerable amount of other material. While Mr. Law quite frankly sympathizes with the seculars and printed almost exclusively their side of the case, he has tried and has in some measure succeeded in being fair to the Jesuits. He brought to his task what all his predecessors save Lingard lacked, careful training in literary craftsmanship, considerable literary skill, and a critical temper. He has written in the prefaces of these books brief but admirable accounts of some of these matters. Mr. Law successfully put the secular case on its feet, and cleared away many of the mists which had shrouded it for centuries.

JESSOP, A. ONE GENERATION OF A NORFOLK HOUSE, A CONTRIBUTION TO ELIZABETHAN HISTORY.

Norwich, 1878, 4°.
Second edition, London, 1879. 8°.

In this delightful book, an English Churchman of some eminence had told the story of the Walpoles, but with an insight into social and political conditions of the time, which render it really a "contribution to Elizabethan history."

POLLEN, JOHN HUNGERFORD, has published in *The Month* during the last fifteen years a series of articles which form in a fashion a history of the Catholics during this period. Despite the gaps in a narrative not intended to be consecutive, despite the restrictions imposed by his general scheme which made long recitals of narrative details out of place, his articles give in many ways the best account yet produced by a Catholic. Father Pollen's great erudition is equalled only by his moderation of statement and the charm of his literary style.

It must, however, be admitted that at times he rescues himself from dilemmas which would sorely tax his self restraint, by the simple expedient of passing lightly over the difficulty; and that, while one can never detect an actual error in statement, or a prejudiced opinion, the general impression is at times unsatisfactory. He is a master in the art of connotation. Still, there are few Protestant writers of which the same cannot justly be said.

TAUNTON, E. L. THE HISTORY OF THE JESUITS IN ENGLAND, 1580-1773. London, 1901.

This book is really a life of Robert Parsons with animadversions upon his conduct and upon that of the Jesuits in general. The author makes considerable parade of the amount of his research, but has not gone very far, and has added little if anything to what we knew before. As a whole the book is uncritical and prejudiced.

STONE, J. M. FAITHFUL UNTO DEATH. AN ACCOUNT OF THE SUFFERINGS OF THE ENGLISH FRANCISCANS DURING THE SIXTEENTH AND SEVENTEENTH CENTURIES.

With appendix and preface by J. Morris. London, 1892.

MEYER, A. O. CLEMENS VIII UND JACOB I VON ENGLAND. Rome, 1904.

V. MATERIALS FOR THE STUDY OF THE LEGAL CONTROVERSY

a. Manuscripts

If the printed books on the history of the Catholics are more valuable than the manuscripts, the situation is completely reversed in regard to the materials for legal history. Here the manuscript material is not only more plentiful but more trustworthy than the printed data.[1] The Lansdowne MSS. contain the invaluable notes by Sir Julius Cæsar of the debates in the Privy Council; the Holkham MSS. contain Coke's holograph notes of many meetings and conferences. The Cotton and Harleian MSS., the Petyt MSS., and most of the collections in the Oxford and Cambridge libraries, contain long reports of speeches and full copies of the controversial documents freely exchanged by the two sides. The bulk of these papers is great, their number is considerable, and they have been so wrongly dated and assigned such varied authors that an attempt has been made in the foot-notes to the text to give as complete a bibliography as possible of the most important speeches and papers.

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[1] Unless, of course, we frankly assume the common law standpoint and declare that there *can* be nothing more important in the study of legal history than what the common law judges have declared to be law; and if we accept the printed reports as infallible *historical* evidence of what the judges' decision was.

The material is highly controversial, often extremely prejudiced, and calls for discriminating handling; but it is reliable. We may not believe the witness, but there is no doubt as to what his testimony was.

The records of the common law courts and the miscellaneous papers of each court preserved at the Record Office, the uncalendared papers packed in dusty bags in the archives of archiepiscopal courts, and of the diocesan consistory courts, contain, no doubt, invaluable material, if only we could get at it without so much physical labour. But at present such work is practically out of the question. Besides, valuable results are to be attained not by the finding of a few forms of prohibition issued to John Doe and to J. S. of Dale *de modo decimandi,* but by the tabulation of hundreds of instances, showing how many prohibitions were issued and on what subjects; how many consultations were granted; whether the technical forms were always carefully observed, whether technical flaws were always sufficient to defeat a prohibition; whether many prohibitions were issued in the same case, or many by the same court for the same type of case, where it must have been clear that according to precedent a consultation must issue on the return of the writ; and the like questions. These are the points on which we need information, and a man might work ten years, and not be able to fill ten octavo pages with positive results. Of course the printed reports furnish us with a statement which the lawyers have always considered authoritative, (perhaps because it was the best attainable) and from the reports, abridgements, and year books the history of the common law must be written till the original plea rolls shall be thoroughly read. But from the historian's point of view, the question is not, have men always believed these books to be trustworthy, but have we in these books the final and definitive authority. The reports may be entirely accurate, but we shall not know that they contain the materials for the history of the law[1] until they have been carefully compared with the plea rolls and processes in the original records.

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[1] They certainly do contain the materials for the history of the law since the year 1640, for it is by following the precedents of the printed law books that the subsequent law has been made. The mistake has been rather in assuming that they contained all the information necessary for the study of the origin of the law declared to be law by Coke in 1608 and later. Coke continually cites manuscript evidence, and this may support him though it is sufficiently clear that on a good many points the few early books in print do not.

b. Printed Books

A good bibliography of English legal history, particularly during this period, has yet to be written, for Bridgman's *Short View of Legal Bibliography* (1807) and Clark's *Bibliotheca Legum* (1819) are hopelessly out of date and also ill-arranged and inaccurate. There are, however, various lists which in some respects fill the gap. The prefaces to Coke's *Reports* contain valuable lists of the books extant at dates ranging from 1600 to 1610, and show the historian exactly what evidence the lawyers of the time possessed, and above all what Coke and his school considered cogent and authoritative. A bibliography of law books of the time of Henry VIII (neither complete, nor wholly accurate) is in Reeves, *History of English Law,* Chapter XXX. H. G. Stevens and R. W. Haynes published in 1873 *A Chronological Catalogue of Law Reports,* and a more exhaustive list, extending from 1295 to 1865, useful despite the meagre bibliographical data, will be found in the *Harvard Law Review,* XV, 1-25. There are also some suggestive remarks by the late Professor Maitland on "The Materials for English Legal History," in the *Political Science Quarterly,* IV, 496-518; 628-648.

The writing of the history of the Common Law in a scientific manner has only begun, and for the sixteenth and seventeenth centuries the best contributions are in the most cases to be found in brief monographs printed in the Law Reviews. Peculiarly suggestive articles, to be read in connection with Justice Holmes's brilliant volume, *The Common Law,* are the following: Sir F. Pollock, "Sovereignty in English Law," *Harvard Law Review,* VIII, 243; J. W. Wigmore, "Nemo tenetur seipsum prodere," *Ibid,* V, 71-88; L. O. Pike, "Common Law and Conscience," *Law Quarterly Review,* I, 443; O. W. Holmes, "Early English Equity," *Ibid.*, I, 162. Certainly any one who would thoroughly understand the complicated legal situation of this time, must begin with the history of terms and actions in the sixteenth century as re-written by the men just named, by Professor Ames, Professor Gray, and others. Their articles are in fact the only secondary material that the serious student will find worth his labour.

Most of the histories of the law are so uncritical in attitude, so rambling in treatment, so prejudiced in favour of the Common Law in season and out of season, that the historian loses faith in them and places them in the same category with Neal, Heylin, and Challoner. Reeves's *History of English Law,* published just before the French Revolution, was in its day a great book, and Finlason's edition (London, 1869) is still useful. Even this latest edition appeared, however, before the real study of legal history had commenced, and it is now inaccurate and antiquated. The only subsequent attempt to put together (outside of a few manuals of no value) the results of research for the whole period of English legal history is W. S. Holdsworth's *History of English Law,* (three volumes, London, 1903, 1909). The vast field he is trying to cover and the enormous amount of material extant on it have in large measure frustrated his vigorous efforts to obtain clear and definite results; the fact that so much good work had been done on the origins of the law and so little on its subsequent history, in a measure forced him to assign an undue amount of space to the years previous to 1307. Naturally too, that part of the story is most complete. Nor could he hope to speak with authority on all points of so vast a subject: his labour was necessarily that of compiling and restating the work of Maitland and his colleagues. The book is able, and as good as could be expected, and is certainly the best we have. No history concerned exclusively with the sixteenth century has as yet been written, no good life of Coke has been published, and we are in fact as nearly in the Dark Ages in the legal history of this subject as we well could be.

On the ecclesiastical side there is nothing worthy of mention save the most technical law tomes and treatises. Gibson's *Codex,* Burn's *Ecclesiastical Law,* and Phillimore's *Ecclesiastical Law* furnish excellent legal statements of many points, but say little about the history of the subject. By far the best history of the ecclesiastical courts is the account by Bishop Stubbs in the *Report of the Commission on Ecclesistical Courts in* 1883, (Parl. Doc. 1883, xxiv.) This, however, is so condensed that it is of little service to one who has not already progressed some distance toward a comprehension of the subject. Material on the Court of Delegates will be found in *Rothery's Return* (1837) ; a brief account of the Star Chamber by Miss Scobell, and an older and poorer account of the High Commission by J. S. Burn, give vague and misleading ideas of the activities of those two tribunals. The Selden Society's publications on the Court of Requests and on the Admiralty give a good idea of the methods of practicing Civil Law in those courts, but say little of their relation to the ecclesiastical courts. A few contemporary tracts by Bancroft, Cosin, Fulbecke, and Ridley, are very valuable; the rest have little or no information regarding the history of the controversy. Spedding's *Life and Letters of Francis Bacon* contains much important data. Of the *Law Reports,* Coke's and Croke's are very much the best; March, Moore, Bendloe, and Dyer cite some cases of prohibitions, but the rest of that very long series of reporters either ignore the whole subject or give little space to it. In fact, the amount of material in print on the ecclesiastical side of the case is not as plentiful as could be wished. On the whole, while there are hundreds of books concerned in one way and another with the history of the common law, and plenty on the technicalities of ecclesiastical practice and procedure, there are comparatively few which have much material directly relating to the clash of the two jurisdictions. Of the former categories, the books to be consulted are for the most part so commonplace, that it would be a work of supererogation even to list their titles; upon the latter, their titles will be found either in this bibliography or in the footnotes to the text.

On one point, however, Tithes, the obscurity of the subject makes a brief bibliography necessary.

1606. G. CARLETON. TITHES EXAMINED AND PROVED TO BE DUE TO THE CLERGIE BY A DIVINE RIGHT.
(Second edition, 1611.)

1619. J. SELDEN. A HISTORY OF TITHES.
(Also 1638.)

1619. R. TILDESLEY. ANIMADVERSIONS UPON MR. SELDEN'S HISTORY OF TITHES.

1621. R. MOUNTAGUE. DISTRIBAE UPON THE FIRST PART OF THE LATE HISTORY OF TITHES.

1623. W. SCLATER. ARGUMENTS ABOUT TITHES.

1625. C. BURGES. NEW DISCOVERY OF PERSONAL TITHES.

1630. J. DODDERIDGE. THE COMPLEAT PARSON, OR A DESCRIPTION OF ADVOWSONS OR CHURCH LIVINGS.
(Also, 1641; 1663.)

1646. SIR H. SPELMAN. TITHES TOO HOT TO BE TOUCHED. CERTAIN TREATISES WHEREIN IS SHEWEN THAT TITHES ARE DUE BY THE LAW OF NATURE, SCRIPTURE, NATIONS, THEREFORE NEITHER JEWISH, POPISH, NOR INCONVENIENT.

1654. W. SHEPPARD. PARSONS GUIDE OR LAW OF TITHES.
(Also, 1670, 1671.)

1676. SIR S. DEGGE. THE PARSON'S COUNSELLOR. WITH THE LAW OF TITHES OR TITHING.
(Many editions.)

1681. DR. CAUBER (DEAN OF DURHAM). VINDICATION OF THE DIVINE RIGHT OF TITHES.

1783. J. RAYNER. TITHE CASES. (1571-1782.)
(3 volumes.)

1786. J. BACON. LIBER REGIS VEL THESAURUS RERUM ECCLESIASTICARUM. WITH APPENDIX OF DIRECTIONS AND PRECEDENTS RELATING TO PRESENTATIONS.

EAGLE AND YOUNGE. TITHE CASES. (1204-1825).

1830. W. EAGLE. A TREATISE ON THE LAW OF TITHES.

LORD SELBORNE. ANCIENT FACTS AND FICTIONS CONCERNING CHURCHES AND TITHES.

G. E. JONES. A HISTORY OF THE LAW OF TITHES IN ENGLAND.

INDEX

INDEX

Abbot, George, Archbishop of Canterbury, i. 382; ii. 262, 263, 265.

Administration of the Church, character of, after the Reformation, i. 40, 91-94; difficulties of, i. 94-98; ii. 22-25; vagueness of information concerning, ii. 29-34.

Administrative problems, general condition of, in the sixteenth century, i. 1-21, 91-100, 234, 392, 400, 401; altered in 1603, i. 287-289; altered in 1605, ii. 20-49; in 1606, ii. 134-136; in 1610, ii. 263-270.

Advertisements of 1564, i. 191, 194, 360, 388.

Allegiance, oath of: origin of, i. 166, 168, 176, 183-185; precedent for, ii. 102-110, 310-324; significance of, ii. 110-112; generally accepted, ii. 175-191; results of acceptance of, ii. 191; movement to enforce, in 1610, ii. 251-254.

Anglicanism, its system of theology, i. 80-84.

Appeal, by secular priests, to Pope, i. 153, 156, 166-186; ii. 176, 179, 193, 194, 199, 202-204.

Archbishop, functions of, i. 93; ii. 21, 32.

Archdeacon, functions of, i. 93, 98, 349; ii. 21, 27, 30, 32; salary of, ii. 223.

Archpriest, office of, created, i. 151, 152, 182, 188, 189; legal position of, ii. 195-199.

Arminianism, ii. 266-269.

Articles of 1575, i. 191, 192, 194.

Articles of 1585, i. 193, 360, 388.

Articles, Thirty-nine: legal status of, i. 193, 194, 196, 200, 202; attempts to reform, i. 321, 323, 345; reaffirmed in 1604, i. 345.

Articles, Whitgift's Three, i. 192, 194.

Articuli Cleri, 1605, ii. 74-88.

Aylmer, John, Bishop of London, i. 37, 62-64, 114, 115, 203, 226.

Bacon, Sir Francis, ii. 120, 124, 186, 221, 227, 231, 233-235, 238, 240.

Bagshaw, Christopher, secular priest, i. 150, 156, 161, 167, 172, 183.

Bancroft, Richard, character of, i. 30, 32, 36-38, 57, 118-119; early life of, i. 22-38; discovers Classis movement, i. 42, 46; writes tracts, i. 46-47; answers Marprelate Tracts, i. 49, 50; preaches Sermon at Paul's Cross, i. 50-54; quarrel with English Puritans over, i. 55; with Scotch ministers over, i. 56-58; heads a crusade to the jails, i. 59; breaks up Classes, i. 60-64; writes tracts, i. 66-67; conception of, of Church and State, i. 72-74; policy of, toward the Puritans, i. 77-78; significance of work of, in the High Commission, i. 100, 101, 107-108; appointed Bishop of London, i. 113-114; work of, as Bishop of London, i. 114-122, 127-131; embassy of, to Denmark, i. 123-127; resists the rebellion of Essex, i. 122-123, 128-129; attitude of, to Catholic problem, i. 132, 141-142, 160-175; examines Weston's "witchcraft", i. 178; measures of, toward an understanding with the seculars, 1602, i. 182-186; at Elizabeth's death-bed, i. 187-188; represents the modern idea of Puritanism, i. 247; real work of, i. 288; relations of, to James I, 1603, i. 298, 301, 302, 307; learns of the

Bye Plot, i. 303-305; fears for his own safety, 1603, i. 305; at the Hampton Court Conference, i. 310-333, 359; work of, on the Canons of 1604, i. 335, 336, 385, 401-402; conflict of, with the Puritans in the House of Commons, 1604-1605, i. 344, 346, 348, 350, 356; accused of high treason by the Puritans, i. 346; plans of, for reform, 1604-1605, i. 352-353, 357-358; enforces conformity, i. 408-411, 414, 417; ii. 3-6, 10; reforms the administrative constitution, ii. 20-49; tries to increase ecclesiastical incomes, ii. 53-57; opposes the common law courts and prohibitions, ii. 74-88; negotiates with the Catholics, 1603-1604, ii. 89-94; policy of, toward Catholics, 1604, ii. 94-95; shapes the oath of allegiance, ii. 106-110; defends the Church in Parliament, 1606-1607, ii. 113-127, 131-133; part of, in the Canons of 1606, ii. 127-129; statistics of attendance of in Parliament, 1597-1610, ii. 129-131; tries Fuller, ii. 142; establishes the Scotch bishops, ii. 154-174; altercation of, with Melvill, ii. 164-166; urges lenience in enforcing the oath of allegiance, ii. 175-189; investigates the legend of the barley-corn, ii. 180; aids the organisation of the secular priests and their plea for Catholic bishops, ii. 196, 201-202; part of, in the legal controversy, 1608-1609, ii. 213, 218-223, 225-226, 230, 241; schemes of, to augment ecclesiastical incomes, 1610, ii. 247, 251, 255-258; blames pluralists, ii. 260; consecrates the Scotch bishops, ii. 261-262; death of, ii. 262.

Barneby, Francis, secular priest, i. 172, 174, 303.

Bedell, William, Puritan and English Bishop, i. 254, 404; ii. 14-16.

Bible, new translation of, i. 324, 357, 358.

Birkhead, George, Archpriest, ii. 192-194, 198-201, 203-204, 253.

Bishop, William, secular priest, i. 151, 172-173; ii. 177, 198, 202.

Bishop, functions of, in the Established Church, i. 91, 91-100, 104, 113-130, 192, 286, 349; ii. 21, 30, 32; incomes of, i. 114-116, 222-225, 290, 313-314, 337-339, 349; size of episcopal estates of, i. 226 note; expedients of, to relieve poverty, i. 226-227; relation of, to the High Commission, i. 109-110; attacked by the Puritans, i. 39, 292-302, 348-351.

Bishops, Catholic, movement for, i. 147-148, 174-177; ii. 194-195, 199-205.

Bishops in Scotland, ii. 154-174, 261-262.

Blackwell, George, Archpriest, i. 152-156, 165, 169, 170, 182, 304; ii. 89, 90, 93, 98-100, 108, 176, 177, 181-183, 185, 186, 192, 198, 202.

Bluet, Thomas, secular priest, i. 150, 156, 160, 164-168, 172, 178-180, 183, 185; ii. 93.

Book of Common Prayer, i. 44, 335, 336, 345, 357.

Book of Discipline, growth of the idea of, i. 43-44; legal standing of, i. 47; revised, i. 48; attacked by Bancroft, i. 50-54, 66-67; revised in 1603, i. 291-298, 313-315; indirectly advocated in 1604, i. 348-350; and in 1606, ii. 117, 126, 127; why impossible of adoption in England, i. 255-256, 405.

Browne, Robert, i. 32, 42, 59, 292, 293.

Burgess, John, Puritan minister, i. 254, 404, 416; ii. 15, 16.

Burghley, Lord. See Cecil, William.

Bye Plot, i. 302-306; ii. 90-91.

Cambridge University, life in, during

Elizabeth's reign, i. 25, 26, 43, 121, 122.

Canons of 1571, i. 191, 194, 388.

Canons of 1597, i. 192, 193, 360, 388.

Canons of 1604, passage of, i. 343, 345-346, 348, 358; formulated, i. 355, 385, 386; importance of, i. 358; significance of, i. 385-402; ii. 265; genesis of, i. 359-384; ii. 273-288, 293-310; legality of, attacked by Puritans, i. 406-407, 410; ii. 115-117, 124, 247, 258.

Cartwright, Thomas, Puritan minister, i. 27, 28, 43, 48, 55, 62-64, 69, 88, 247, 249, 297, 308.

Catholic clergy, character of, i. 8, 148-151; geographical distribution of, i. 23; number of, i. 133, 134, 156, 157; real intentions of, i. 141-142; necessity of organisation of, seen, i. 143; ii. 195-196; attitude of, to the State, i. 186; ii. 89-90, 266-267; attitude of, to the oath of allegiance, ii. 176-177, 181-186, 193, 253, 254; attitude of, on Catholic bishops, i. 147-148, 176-177; ii. 194-195, 199-205.

Catholic laity, number of, i. 131, 133-136, 146, 157-159; ii. 251, 252; distribution of, i. 135 map, 141; determined resistance of, to laws, i. 136-141; effect of the defeat of the Armada upon, i. 143; attitude of, to the State, i. 169-170, 186, 287; ii. 91-93, 105-106, 266-267; attitude of, toward the Gunpowder Plot, ii. 95-96, 101, 175; attitude of, toward the oath of allegiance, ii. 175, 177, 179, 183, 184, 187-191; attitude of, toward the Pope, ii. 194; attitude of, toward the English Church, ii, 191, 268-269.

Cecil, Robert, Viscount Cranbourn, Earl of Salisbury, i. 113, 114, 122-128, 167, 168, 180, 181, 324, 411, 412; ii. 11, 87, 90, 91, 142, 147, 148, 176, 186, 188, 202, 215, 216, 221, 239, 257.

Cecil, William, Lord Burghley, i. 33, 42, 58, 113, 114.

Censorship of the press, i. 119-128, 171.

Ceremonies objected to by Puritans, i. 44.

Chaderton, Laurence, Puritan minister, i. 26, 42, 48, 249, 254, 293, 329, 319 note; ii. 14-16.

Chapman, Edmund, Puritan minister, i. 27, 46, 249, 257.

Church of England, administrative condition of, in the sixteenth century, 1-21; connection of, with the State, i. 40; Bancroft's conception of, i. 54, 72-74; relation of, to the State, i. 68-90; significance for, of Bancroft's relation with the Catholics, i. 186-187; significance for, of Elizabeth's death, i. 187; condition of, in 1603, i. 192-243; legal relation of the Puritans to, i. 196-197; the economic causes of administrative difficulties, i. 234; attitude of the people toward, i. 275-281; ii. 266-267; new aspect of problems of, in 1603, i. 286; present constitution of, created in 1604, i. 334; significance for, of the acceptance of the oath of allegiance, ii. 191; authority of, menaced by prohibitions, ii. 206-210; condition of, in 1610, ii. 263-270.

Churchwardens, duties of, i. 98; ii. 21, 27, 30, 33, 34; character of, i. 211-213; ignorance and negligence of, i. 214-215; attitude of, toward the vicar's nonconformity, i. 262-269.

Churches, parish, bad condition of, in 1603, i. 215-218; condition of, in 1610, ii. 264-265.

Classis, i. 43, 44, 293, 314.

Clergy of Established Church, character of, i. 8; condition of, in 1603,

i. 205-243; conformity of, i. 206-207; learning of, i. 207-209; pluralists and nonresidents, i. 209-211; causes of the bad condition of, i. 219-243; condition of in 1610, ii. 264.

Coke, Sir Edward, Chief Justice, i. 24, 27, 419 note; ii. 65-66, 78, 88, 135, 149, 210, 213 note, 214-216, 221-229, 231-246.

Colleton, John, secular priest, i. 144, 151, 156; ii. 93, 177, 194, 198, 202.

Commons, House of: reasons for its defence of the Puritans, i. 271, 272, 407; ii. 220; session of 1604, i. 341, 344-352, 356; session of 1605-6, ii. 110-127; session of 1606-7, ii. 131-133; session of 1610, ii. 246-251, 254-255, 258-259.

Commision for Causes Ecclesiastical. *See* High Commission.

Conceptions of Church and State, i. 68-90.

Conformity, history and power of, in 1603, i. 9-13; necessity of, in the sixteenth century, i. 19-20; how to be attained, i. 199, 202; influence of, on the idea of subscription, i. 363-365, 392.

Congregationalism, i. 32, 42, 59, 292, 293.

Congregations of Puritans, i. 39, 40, 46, 262-268.

Constitution of the Church of England, condition of, in 1603, i. 191-204, 359; precedent for, in 1603, i. 259-284; ii. 273-310, 325-330; formulated anew in the Canons of 1604, i. 385-402; legal status of, i. 370-371.

Consultation, ii. 58, 81, 143-145, 209.

Convocation, power of, i. 193, 363-364; ii. 115-117; session of 1604, i. 343-346, 348, 351, 358; session of 1606, ii. 127-129.

Courts, common law: basis of quarrel of, with the ecclesiastical courts, ii. 56-73; disagreement of, on prohibitions, ii. 74-88; debates in which the quarrel was fought out, ii. 206-245; real significance of, ii. 228-229, 245.

Courts, ecclesiastical: reform of, i. 399-401; effect of reformation on, ii. 59, 75, 76, 78; basis of quarrel of, with the common law courts, ii. 56-73; disagreement of, on prohibitions, ii. 74-88; authority of, endangered by prohibitions, ii. 206-210; debates over extent of authority of, ii. 210-245; results of the quarrel, ii. 245.

Cowell, John, civilian, i. 335; ii. 211, 248-249.

Cranbourn, *See* Cecil, Robert.

Custom, *See* Modus decimandi.

Dangerous Positions, tract by Bancroft, i. 66-67.

Dean, rural, functions of, ii. 21, 30, 32.

Denmark, Bancroft's embassage to, i. 123-127.

Deprivation of Puritan ministers, i. 352, 403-423; ii. 3-19; declared illegal by the House of Commons, ii. 113, 118, 119, 249; why not rescinded by the Church, ii. 125-127, 258.

Dilapidations and waste, i. 114, 115, 226, 227; ii. 44-45.

Downame, George, Puritan minister, i. 254, 257, 258; ii. 14, 16-18, 212.

Edward VI, ecclesiastical policy of, i. 4, 5.

Egerton, Stephen, Puritan minister, i. 116, 117, 254, 262, 293, 296, 313, 329, 345.

Ellesmere, Thomas Egerton, Baron, Lord Chancellor, ii. 165, 166, 221, 223-225, 233, 240.

Elizabeth, ecclesiastical policy of, i.

5, 6, 21, 96-98, 103, 113, 132, 188, 201, 203; refuses toleration to Catholics, i. 166; death of, i. 187-188; legacy of, to Church and State, i. 188, 240.

Episcopacy, Puritan plans for reform of, i. 43, 44; dispute over by Bancroft and Cartwright, i. 55; opinion of early reformers regarding, i. 68-69.

Erbury, Puritan minister, i. 254, 306, 329, 346, 347.

Excommunication, effect of the Reformation on force of, as a penalty, i. 94, 394, 395; use of, i. 104; the only ecclesiastical penalty, i. 339-340; Puritan complaints of, i. 290-319, 349; substitute proposed for, i. 330, 339, 340, 350, 352; ii. 119, 124, 259; attacked in Parliament, 1606-7, ii. 119-120; attitude of Scotch and English Puritans upon, compared, ii. 155-157; attacked by common law courts, ii. 207; attacked by the House of Commons, 1610, ii. 249.

Fees, i. 224 note, 229, 233, 290, 400; ii. 45-46.

Feilde, John, Puritan minister, i. 48, 254, 313, 319 note, ii. 14.

Fleming, Sir Thomas, Chief Justice, ii. 135, 223, 225.

Fuller, Nicholas, Puritan lawyer, i. 410; ii. 118, 134-153, 247.

Galloway, James, Scotch minister, i. 294, 301, 306, 307, 312, 313, 316, 339.

Gardiner, Dr. S. R., criticisms of his *History of England*, i. 290, 332, 394, 395; ii. 4, 5, 83, 84 note, 91 note, 95, 96, 141-145, 151, 180.

Garnet, Henry, Jesuit, i. 144, 150, 169; ii. 93, 96-97, 101, 108, 180, 181.

Grindal, Edmund, Archbishop of Canterbury, i. 30, 37, 43, 100, 198, 360; ii. 26.

Gunpowder Plot, origin of, ii. 95-98; connection of Jesuits with, ii. 96-97, 101; results of, ii. 95, 98-101, 110, 112, 178, 268.

Hampton Court Conference, first proposed, i. 290, 312; James's intentions concerning, i. 309, 311, 312, 336; cause of, i. 310, 311; the debate itself, i. 318-330; results of, i. 311, 331-334, 340; accounts of, ii. 331-354.

Hatton, Sir Christopher, patron of Bancroft, i. 31, 35.

Henry IV of France, helps Appellants on their appeal to Rome, i. 172, 175, 176, 179; effect of murder of, on English sentiment, ii. 251.

Henry VIII of England, ecclesiastical policy of, i. 4, 93; use of the High Commission by, i. 101.

High Commission, early history of, i. 91-112; Bancroft a member of, i. 35; tries Snape, i. 61; tries Cartwright, i. 62-64; handles censorship of the press, i. 119, 136; routine work of, i. 173, 305; issues Advertisements of 1564, i. 194; attacked at the Hampton Court Conference, i. 328, 330; alters the Book of Common Prayer, i. 335; attacked by the Puritans to prevent the enforcing of subscription, i. 406-408, 411, 420; plans to reform in 1604, i. 328, 330, 339-341; ii. 206-207; position of, in the Church, ii. 22, 30, 33, 136; attacked in Parliament, 1606-1607, ii. 118-120, 132, 133; attacked by Fuller, ii. 134-153; erected in Scotland, ii. 171; attacked by the common law courts, ii. 206-207, 216-218, 225, 230, 231, 236-237, 240, 242-243; plans to reform in 1610, ii. 259,

263, 265; why abolished in 1660, ii. 270.
Hildersham, Arthur, Puritan minister, i. 64 note, 254, 293, 296, 313, 329; ii. 11.
Hobart, Henry, Attorney General, ii. 147, 149, 150, 151, 231, 236-239.
Holtby, Richard, Jesuit, ii. 176, 177, 183, 184, 200, 202, 204.
Hooker, Richard, conceptions of, of Church and State, i. 74-78.

Impropriations, amount of, i. 232-233, 241; attack upon, i. 290, 301, 302, 337-339; ii. 54, 257.
Incomes, ecclesiastical, condition of, i. 53, 114-116, 219-223; cause of bad condition of, i. 223-237; this, the vital question of reconstruction, i. 229, 234, 239, 288; opposition to the increase of, i. 234, 291-292; size of Puritan, i. 274-275; denial of inadequacy of, i. 291-292, 353; necessity for increasing, ii. 53-54; Puritan idea of increasing, i. 349; measures taken by the Church to increase, i. 313-314, 337-339; ii. 53-57, 65-69, 206-207, 247-248, 255-258; eventual remedy for, ii. 269.
Injunctions of 1559, i. 191, 192, 194, 360, 388.

Jacobs, Henry, Puritan minister, i. 254, 296, 306, 329; ii. 14.
James I of England (VI of Scotland), in Scotland, i. 126, 127, 168, 186; effect of accession of, on the Church of England, i. 285-288; personality of, i. 288-289, 291; position of, during 1603, i. 291, 298, 301, 302; at Hampton Court Conference, i. 310-333; attitude of, toward Puritans, 1605, i. 408, 413, 414, 418-419, 422; attitude of, to Catholics, 1603-1605, ii. 91-92, 107; negotiations with Pope, ii. 91-92 notes, 107; defends the oath of allegiance, ii. 109-111 and notes, 178; petitioned by the House of Commons against the Church, ii. 124, 132; opinion of, on Canons of 1606, ii. 128; alarmed at the attack on the High Commission, ii. 142-143, 146, 148, 149; re-establishes bishops in Scotland, ii. 154-174; policy of, for enforcing the oath of allegiance, ii. 178, 179, 186, 189; holds debates on the legal controversies, 1608-1609, ii. 212-216, 225-229, 231-241; upholds Bancroft's policy, 1610, ii. 255-256, 258-259.
Jesuits, organise the English Mission, i. 142; first quarrel of, with the seculars, i. 144, 145; favour the Spanish Succession, i. 145-146; ideal of, i. 145-147; secure the appointment of the Archpriest, i. 151; charged with extravagance, i. 154-155; attitude of, toward toleration in England, i. 162-163; real services of, to the English Catholics, i. 176-177; position of in 1602, i. 182-183; united to the seculars by the accession of James, ii. 89-90; complicity of, in the Gunpowder Plot, ii. 96-97, 101; divided from the seculars, ii. 98-101; oppose the oath of allegiance, ii. 176, 177, 182, 184; oppose the movement for Catholic bishops, ii. 197, 199, 200-204.
Jewel, Melancthon, Puritan minister, i. 62, 254, 410-411.
Judges, common law: attitude of, toward the ecclesiastical courts before 1605, ii. 68-73; attitude of, in 1605, ii. 74-88; uphold the ecclesiastical jurisdiction, ii. 135; aid Fuller, ii. 142, 143, 145, 148, 149, 153; maintain their stand upon prohibitions, ii. 149, 206-245; Bancroft's opinion of, ii. 219, 220.
Judges, ecclesiastical: attitude of,

toward the common law judges in 1605, ii. 74-88; conflict of, with the common law judges over prohibitions, ii. 206-245; results of the conflict, ii. 245; petitions of, ii. 218, 221.

Justices of the Peace, influence of, i. 132, 136-141; duties of, i. 120, 139.

Knewstubbs, John, Puritan minister, i. 27, 48, 254, 268, 293, 313, 325, 329, 404, 408; ii. 9, 10, 14.

Knightly, Richard, patron of Puritans, i. 60, 270, 342, 417, 418.

Knollys, Sir Francis, Puritan patron, i. 42, 48, 55.

London, Bishop of, special functions of, i. 106, 113-130.

Laud, William, Archbishop of Canterbury, i. 108; ii. 245; contrasted with Bancroft, i. 379, 380, 382; ii. 159, 173-174.

Law, civil, in England, position of threatened, ii. 218-221.

Law, common, theory of, i. 363, 364; Puritans use to block ecclesiastical procedure, i. 406, 407, 410; ii. 115, 134-136; what it was thought to be, ii. 80, 214, 215, 240.

Law, ecclesiastical, i. 47, 237; condition of, in 1603, i. 191-198; ii. 59, 207.

Law, penal, i. 45; ii. 110-112, 249, 254, 255; not rigorously enforced by James I, ii. 175-191, 258; movement to enforce, in 1610, ii. 251-254.

Marprelate Tracts. *See* Tracts.

Mary Stuart, effect of death of, on the Catholic cause in England, i. 142-143.

Melvill, Andrew, Scotch minister, ii. 157, 159, 162, 163-166, 173.

Melvill, James, Scotch minister, ii. 155, 162, 163-169, 173.

Millenary Petition, i. 290-294, 299-301.

Modus Decimandi, origin and extent of, i. 230-231; factors altering status of, i. 231-235; ii. 54-56; dispute as to legal status and definition of, ii. 62-64, 69-71, 214-215, 224, 226-228, 232, 233, 240, 244-245; condition of, in 1610, ii. 264.

Mush, John, secular priest, i. 144, 151, 156, 162, 172; ii. 175, 176, 177, 187, 194, 198, 202, 203, 253.

Nonconformity, true causes of, i. 117, 211-215, 269-278.

Nonresidence, i. 192, 211, 220, 290, 299, 300, 337, 351, 354, 399, 400; ii. 118, 206, 247, 263, 264.

Oath *ex officio*, attacked, i. 61-64, 328, 339, 341, 349, 364; ii. 73, 76, 124, 138, 139, 206, 207, 259.

Ordinances, formed the true constitution of the Church in 1603, i. 359-383; legal status of, i. 370-371; bibliography of, i. 383-384.

Organisation, necessity of, in reformed churches, i. 16; the great problem of the sixteenth century, i. 21, 143, 144.

Papacy, the great sanction of conformity, i. 10; position of, in England before the Reformation, i. 93, 94; negotiates with James, ii. 91-92, 107; attitude of, toward toleration, i. 176; appealed to, by the seculars, i. 153-156, 175-176, 179, 180; attitude of, toward the oath of allegiance, ii. 179, 181, 186, 193; attitude of, on the establishing of Catholic bishops, ii. 197.

Parliament. *See* House of Commons.

Parsons, Robert, Jesuit, life of, i. 24, 26, 144, 146, 149-150; secures the appointment of the Archpriest, i. 152; defeats first appeal of the seculars, i. 153; belief that he tried to have Elizabeth assassinated, i. 165; defeats the second appeal of the seculars, i. 169, 170, 172, 176, 177, 182, 184, 186; attitude of toward Catholic bishops, i. 177-180; ii. 192, 199, 200, 202-204; attitude of, on the oath of allegiance, ii. 175, 176; death of, ii. 205.

Penry, John, Puritan minister, i. 40, 49, 50, 55, 60, 65.

People, attitude of, toward the Church, i. 275-281, 287; ii. 18, 19; hostility of, toward the Puritans, i. 262-269; ii. 8, 9; intellectual ability of, i. 275, 278.

Petitions, from Puritans, i. 39, 45, 290-298, 306-308, 343, 345, 346, 407, 412 note, 413, 417-419; from Catholics, i. 166; ii. 91; from civilians, ii. 218; from the House of Commons, i. 352; ii. 118, 250, 258.

Pluralities, i. 29, 34, 114, 192, 209-211, 220, 222, 233 note, 239, 290, 299, 300, 337, 349, 351, 353, 354, 399, 400; ii. 53-54, 118, 206, 247, 255, 256, 258-260, 263, 264.

Presbyterianism in England, attempt to introduce in 1584, i. 43, 44, 48, 55; this, the vital issue between the Church and the Puritans, i. 248, 281, 317, 331; real strength of, in the ministers only, i. 268; attempt to introduce in 1603-1605, i. 291-302, 313-315, 325, 327, 341, 347, 348, 352, 354, 420; real justification for, ii. 21; indirectly supported by the House of Commons, 1605-1610, ii. 117, 126-127, 247, 248; to be attained by rendering the bishops powerless, ii. 136.

Presbyterianism in Scotland, i. 54-58; ii. 154-174, 261-262.

Presentations, significance of, in introducing nonconformity, i. 94-95, 97, 110-112, 209, 233, 269-271.

Privy Council, connection of, with the High Commission, i. 100-107

Prohibitions, defined, ii. 57, 66, 67, 218; history of, ii. 58-59, 69-71; disputes over technicalities of, in 1598, ii. 77-78; in 1605, ii. 74-88, 223-228, 231-232; number of, ii. 82, 206, 221, 236; effect of, upon ecclesiastical administration, ii. 206-210; debates over, in 1608-1609, ii. 211-245; decision upon, ii. 245, 246, 259.

Prophesies, significance of, i. 43.

Protestantism, i. 5.

Puritanism, meaning of, i. 15, 16, 244-249; as a system of theology, i. 78-80, 82-83; movement for, largely of ministers, i. 268; reasons for growth of, i. 269-278; reasons for rejection of, in England, i. 253-256.

Puritan clergy, character and learning of, i. 8, 26-27, 251-259; attempt of, to introduce Presbyterianism, 1584-1590, i. 39-65; ideas of, on reform, i. 44, 50, 53, 247, 248, 290-298, 313-315, 321-332, 338-341; selfishness of, i. 53; relation of, to the laity, i. 53, 262-268, 415; schism among, i. 59, 61, 62, 248; relation of, to the Church, i. 196-197, 248; number of, i. 249-251; geographical distribution of, i. 23, 254, 255; attitude of congregations toward, i. 262-268; reasons for power of, i. 269-278; condition of in 1603, i. 292-293; demands of, rejected by the Canons of 1604, i. 397-399; why movement of, failed, i. 353-356, 409-410, 419, 423; forms of submission offered to, i. 376-377; deprivation of, i. 403-423; motives of, to resist deprivation, i. 403-407; number of deprived, ii. 3-10; character of those deprived, ii. 13, 14; result of the deprivations, ii. 12-19; attempt to reinstate the deprived with the aid of Parliament, ii. 113-127; attempt to reinstate by attacking the High Commission, ii.

134-153; intolerance of, ii. 110, 111, 191; list of Puritan complaints, ii. 355-357.

Puritan laity, number of, i. 40, 259-262, 268; attitude of, to the Church, i. 53; ii. 113; attitude of, to Puritan clergy, i. 262-268, 415; stood in the way of reform, i. 353; intolerance of, ii. 110-111; Puritan manifestoes, ii. 358-365.

Pursuivant, functions of, i. 104.

Raignolds, John, Puritan minister: favours the Discipline, i. 48, 55, 249, 254, 293; at the Hampton Court Conference, i. 318-327; threatened with deprivation, ii. 14-16.

Ravis, Thomas, prolocutor of Convocation, i. 347; Bishop of London, ii. 48, 142.

Reconstruction in England, a natural growth, i. 1; ii. 269; problem of, i. 1-21; leader of (Bancroft), i. 22; made possible by the split of the Catholic party, i. 186-187; necessity for reconstruction of the constitution, i. 191-198; ideas of early English reformers on, i. 198-201; antecedent conditions of, i. 203-204, 240; helped by the accession of James I, i. 285-288; of the constitution, i. 334-402; episcopal plan of, i. 341; full scope of in 1604, i. 357-358; administrative, ii. 20-49; results of, ii. 263-268; forces which finally accomplished, ii. 269-270; legal opposition to, Book III entire.

Reconstruction in Scotland, ii. 154-174.

Recusants. *See* Catholic laity.

Reform, as seen by the Puritans, i. 44-45.

Reformation in England, character of, i. 1, 41, 239; Bancroft's ideas of, i. 248.

Reformation on the Continent, an appeal to history, i. 14; organisation of, explained, i. 17-18.

Renaissance, influence of, on the English reformation, i. 85-88.

Ridley, Sir Thomas, i. 335; ii. 211.

St. Paul's Cathedral, condition of, i. 114, 117-118.

Salisbury. *See* Cecil, Robert.

Scholarship, classical, influence of, on theological controversy, i. 85-88.

Scotland, Kirk of: bishops in, episcopacy, ministers, etc., ii. 154-174, 261-262.

Seculars, or secular priests, created as missioners, i. 142; first quarrel of, with Jesuits at Wisbeach, i, 144; first organisation of, i. 144; ideal of, i. 147-148; character of, i. 149, 177-178; resist the Archpriest, i. 153; first appeal of, to Rome, i. 153; second appeal of, i. 156, 166-186; attitude of, toward oath of allegiance, i. 183-185; results of years 1595-1603 upon, i. 186; united to Jesuits by accession of James I, ii. 89-90; offer oaths of allegiance, ii. 102-110; support the oath of allegiance, ii. 176-177, 181-183, 185-186, 193; defy the Pope, ii. 193-194; demand bishops, ii. 194-195, 199-205; final agreement of, with the State, ii. 266-267.

Seminaries, i. 133, 163; ii. 197, 198.

Sermon at Paul's Cross, by Bancroft, 1588, i. 50-54.

Sidesmen, duties of, i. 98.

Simony, i. 192, 227-228.

Snape, Edmund, Puritan minister, i. 48, 60, 61, 293.

ii. 77-78; death of, i. 336.

Spain, and the English Catholics, i. 142, 145, 165, 168, 169; opposes the second appeal of the seculars, i. 172, 179.

INDEX

Sparke, Thomas, Puritan minister, i. 249, 254, 319 note; ii. 14, 16, 18, 212.

Stanhope, Sir Edward, civilian, i. 335.

Star Chamber, i. 64.

State, influence of, on the Church, i. 40; relation of, to the Church, i. 68-90; disliked by Churchmen, i. 105.

Statutes, authority and interpretation of, ii. 238-239, 241-244.

Subscription, i. 39, 349; importance of, to the Church, i. 361, 362; psychology of, in 1603, i. 362-365; history of, i. 365; growth of forms for, during Elizabeth, i. 365-375; enforced in 1604-1605, i. 403-423; reasons against, i. 407, 416; ii. 122, 247; defended by Bancroft, 1606, ii. 120, 123.

Supremacy, Act of, (1 Eliz. c. 1.) basis of the High Commission, i. 103, 191; ii. 140, 146, 216, 236, 237, 242-243.

Survey of the Holy Discipline, tract of Bancroft's, i. 66.

Synods, i. 43, 44, 48, 52.

Taxation of clergy, by the State, effect of, upon the Church, i. 116, 223-225; ii. 264; by clergy, i. 224 note.

Tithes, history of, before the reformation, i. 229-232; influence of reformation on, i. 232-233; ii. 60-62; effect upon, of the rise in prices, i. 233-237; proposal to restore tithing in kind, i. 337-339; ii. 54-57, 247-248, 255-258; legal authority for, ii. 56-57; obstacles against the restoration of tithing in kind, ii. 57-73; treble value and its recovery, ii. 234-235, 243-244.

Toleration, not believed in by the reformers, i. 18-20, 199, 394; Puritans not believers in, ii. 110, 111; for Catholics, i. 162-163, 166, 168, 176, 180.

Tracts, Catholic, i. 166, 170, 171, 174, 178, 189-190, 346, 347; ii. 91, 183, 185; Puritan, i. 46, 49, 55, 66; ii. 115-116.

Travers, Walter, i. 27, 28, 43, 48, 69.

Uniformity, Act of, (1 Eliz. c. 2,) i. 191.

Visitations, Puritan idea to reform, i. 44; place of, in the ecclesiastical fabric, i. 93, 98; ii. 23-25; weakness of, i. 93-100, 116-118; ii. 20-22; attempt to reform, by Parker, ii. 26, 35; by Whitgift, ii. 26-27, 35, 40, 42; by Bancroft, ii. 28-49.

Visitation Articles, important part of the constitution, i. 378; influence of, on the growth of the Canons of 1604, i. 378-382; codification of 1576, i. 360; ii. 28; codification of 1605, ii. 28-29; precedent for, ii. 289-292.

Visitation Articles of 1576, most important administrative document of Elizabeth's reign, i. 360; ii. 28, 289-290.

Ward, Samuel, Puritan minister, i. 254, 258, 259, 404; ii. 14-16.

Watson, William, secular priest, i. 172, 174, 175, 183-185, 302-305, 346.

Whitgift, John, Archbishop of Canterbury, i. 29, 35; conceptions of relation of Church and State, i. 69-72; reforms of, 100-101, 360, 371-373; ii. 26-27, 35, 40, 42; champions Bancroft, i. 113-114; ii. 366-369; at Elizabeth's death bed, i. 187; relations of, with James I, i. 298, 301, 307; attacks prohibitions, ii. 77-78; death of, i. 336.

Warden. *See* Churchwarden.

Wilcox, Thomas, Puritan minister, i. 254, 262, 293, 329.

Wisbeach, Castle of, prison for Catholics, i. 120.

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